Oct 13 1876
Terry -

3 Otto 38
3 Otto 44

M. R.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 469. 3 324 30

HARVEY TERRY, APPELLANT,

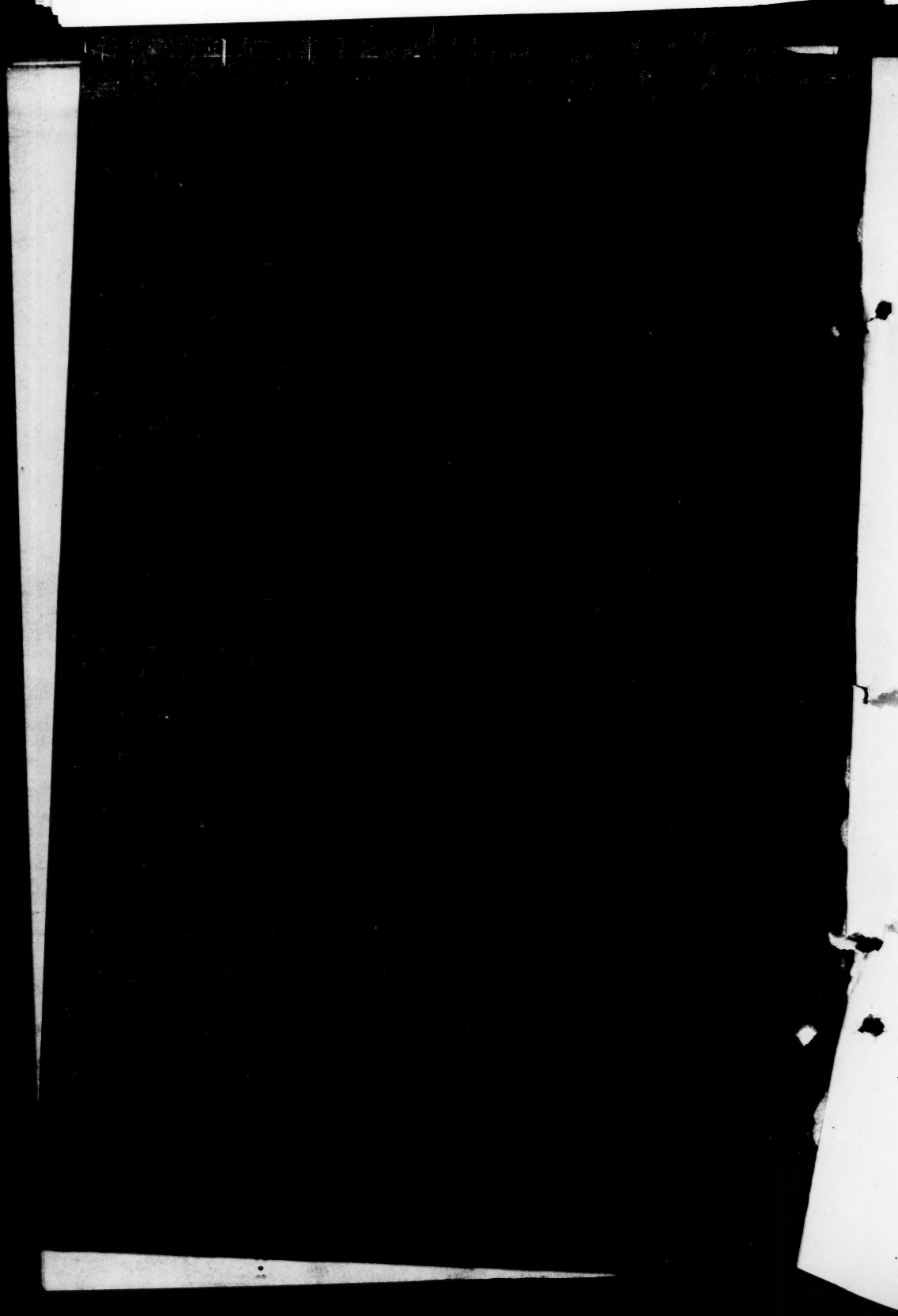
vs.

THE BANK OF COMMERCE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED AUGUST 15, 1874.

Oct 24 1876
Demurrer -
Clerk's fee



SUPREME COURT OF THE UNITED STATES.

No. 469.

HARVEY TERRY, APPELLANT,

vs.

THE BANK OF COMMERCE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Assignment	11	5
Schedule A	15	7
Order to show cause	19	8
Subpœna	19	8
Leave to amend bill	21	9
Order for defendant to answer December rules	22	10
Order to amend bill	22	10
Amendment of bill of January 8, 1870	23	10
Order of court granting leave to amend bill	26	12
Motion for receiver and order appointing same	27	12
Order appointing a commissioner	28	13
Suggestion of death of John C. Ferrill	29	13
Report of Andrew Sloan, commissioner	30	13
Order affirming report of commissioner	31	14
Final decree	32	15
Fieri facias against Bank	34	15
Order to make publication for all parties to file claims, &c	36	16
for receiver to pay into court certain moneys	38	17
appointing W. G. Mann special master	39	17
of receiver of August 10, 1873	41	18
of W. Grayson Mann, special master	44	20
thern Express Company	48	22
Dobbins	49	23
Anderson	50	23
and R. J. Lowery	50	23
Miller	50	23
of William Dougherty	51	23
W. Scott	51	24

	Original.	Print.
Report of special master, continued:		
John V. Terry	52	24
Harvey Terry	52	24
Timothy Baker	53	25
Hugh McCrea & Co	54	25
John Young	54	25
George W. Hatch	55	25
schedule C	57	26
Exceptions to master's report by G. W. Hatch et al	60	28
Harvey Terry	61	28
various parties	63	29
G. W. Hatch et al	64	29
Order for receiver to sell real estate	66	30
Rulings of court on exceptions to master's report	68	31
Special master's supplemental report	68	31
H. W. Mercer	69	31
John L. Hardee	70	32
James Cope and V. Klein	71	32
Levi Lillienthal	71	32
A. Low and C. Green	72	33
William Duncan	73	33
Elias Brown	75	34
Branch, Sons & Co	76	34
Nicholas Wolf	76	34
Charles F. Mills	77	35
Final order confirming master's report	78	35
Receiver's report	79	36
Petition of H. Terry for special counsel fees	81½	38
Petition for appeal and severance	82	38
Allowance of appeal and severance	85	39
Appeal bond	86	40

a At a stated term of the circuit court of the United States for the southern district of Georgia, begun to be holden on the second Monday (being the thirteenth day) of April, A. D. 1874, at the city of Savannah, in the said district:

Present, the honorable William B. Woods, U. S. judge for the fifth judicial circuit, and the honorable John Erskine, U. S. judge for the districts of Georgia, presiding:

Among other things the following proceedings were had, to wit:

HARVEY TERRY, COMPLAINANT,
vs.
THE BANK OF COMMERCE AND OTHERS, defendants. } In equity.

Be it remembered that heretofore, to wit, on the twelfth day of July, A. D. 1869, came the said complainant, by his solicitor, Amherst W. Stone, and filed his bill of complain*ant* against the said defendants in the words and figures as follows, to wit:

1 *Bill of complaint.*

UNITED STATES OF AMERICA,
Southern District of Georgia:

To the honorable the judges of the fifth circuit court of the United States for the southern district of Georgia, sitting as a court of equity:

Harvey Terry, a citizen of the State of Pennsylvania, in the said United States of America, brings this bill of complaint, in behalf of himself and all other parties in like condition who will concur and unite and contribute to the expenses of this proceeding, against the "Bank of Commerce," a body corporate by the laws of said State of Georgia, and John C. Ferrill, who are citizens of and reside in the State of Georgia, in the said southern district of Georgia, and in the said United States of America.

And thereupon your orator, Harvey Terry, as well for himself as for those who may hereafter unite in this proceeding, complains and says, that the Bank of Commerce, a body corporate and politic, regularly incorporated by the laws of the said State of Georgia, located and heretofore doing business in the city of Savannah, in the said southern district of Georgia, as a bank, and engaged in the ordinary business of banking, to wit, in issuing and circulating its notes or bills, commonly called "bank bills," selling exchange, securing deposits, &c.

2 That your orator heretofore for a valuable consideration, and in the regular course of business, obtained and acquired possession of by delivery of the said notes or bills so issued and put in circulation by said bank, (the same being payable to bearer,) to the amount of ten thousand dollars, of various dates, numbers, and denominations, and which said bank-bills are with this bill filed in the office of the clerk of this court; that the said bank-bills are the property of your orator, and he alone entitled to receive payment thereof.

That before, on, and after the thirty-first day of July, 1866, the said Bank of Commerce failed to execute or perform any of its functions as a bank, and became and was in fact insolvent, and that since the day last aforesaid the said bank, being so insolvent, has failed and refused,

and still refuses, to redeem its outstanding bills so issued and circulated and to pay its depositors or other creditors.

That afterwards, on the thirty-first day of July, 1866, the said bank executed a deed of assignment to John C. Ferrill purporting to convey to him all the property, effects, or assets of said bank in trust for the benefit of its creditors, a copy of which is hereto annexed, marked Exhibit A, and which your orator prays may be made a part of this his bill, with leave of reference thereto as often as may be necessary.

That said John C. Ferrill, on the day of the execution of
3 said deed, accepted the same and the trusts thereby created, and took upon himself the execution of the same. And your orator alleges that the said John C. Ferrill, at the time of the execution of the said deed of assignment and the acceptance thereof, and for a long time before had been and then was the cashier of said bank, and had as such the custody of all the property, effects, and assets of every description of said bank, and immediately on accepting said trust took possession, control, and exclusive management of said property as such assignee and upon the trust declared in said deed.

And your orator had well hoped that the said assignee would, as *soon* 'as his duty, have distributed amongst the creditors of said bank the large amount of money so assigned him at once, and without any delay, and as early as practicable have converted the property assigned into money, and make like distribution of that also.

But on the contrary your orator expressly charges that he has refused to distribute the said large sum of money or any portion thereof to or amongst the creditors of said bank or any portion of them, and has neglected and refused to sell and convert into money the property and assets so assigned him, but has appropriated and is still appropriating the same to the use of the said bank, and to his own use, and to the use of other persons, and to purposes foreign to said trust and in disregard of the rights of your orator and the other credit-
4 ors of said bank and his duty and obligation as such assignee and trustee.

Your orator expressly charges that the said John C. Ferrill has been and is now using means to depreciate the par value of the notes of said bank in order that the stockholders, he being one and owning and controlling three hundred and twenty-six shares of the capital stock of said bank, and other interested parties may buy them in at reduced prices and thus speculate or receive an advantage and profit from your orator and others holding said notes.

And your orator further shows unto your honor that all the property, effects, and assets owned and claimed by said bank at the time of the execution of said deed, and within a short period anterior thereto, are not embraced in the schedule attached to said deed of assignment and which came into the possession of said assignee, or ought to have, and with proper care and management might have been reduced to possession by the said assignee.

That in consequence of said assignee having the exclusive custody of such property, effects, and assets as officer of said bank as before stated, and refusing when taking possession of the same, and since that time as such assignee, to account with or give information to the creditors of said bank, or allow examinations made by them as to said property, effects, and assets, which have come into the possession of
5 said assignee, your orator is unable to give a more particular account or description of the same, but charges that it is in the

power of the said assignee to do so, and your orator asks that the said John C. Ferrill may be required fully to discover the same.

Your orator is informed and advised that, by a special provision in the charter of the said Bank of Commerce "that the personal and private property of each stockholder shall be bound for the ultimate redemption of all bills or notes issued by said bank, and all other claims against the same, in proportion to the stock held by them, respectively."

Your orator charges this liability, and claims the full benefit thereof, and his full remedy, should it become necessary, to secure and enforce his just, legal, and equitable rights and demands against the stockholders of the said bank.

To the end, therefore, that the said actings and doings of the said Bank of Commerce, and the said John C. Ferrill, trustee as aforesaid, may fully be disclosed and reviewed; that the rightful demands of your orator, and such other creditors of the said bank as may join in this bill of complaint, and share the costs and expenses thereof, may by properly investigated, ascertained, and adjusted; that the whole assets of the said bank may be collected under and by virtue of the judicial
6 power of this honorable court, and received and paid into this court, and be regularly, lawfully, and equitably distributed to the respective creditors entitled thereto under the direction of this court; and that your orator may have such other and further relief as the equity of the case may require; and that the said defendants may be compelled to answer in all respects this bill as fully and particularly as if thereunto specially interrogated, and that not only to their knowledge and remembrance, but also as to their information and belief, and that they may more especially answer and set forth—

1st. Whether the said deed of assignment was not executed and accepted as charged in said bill, and whether the copy annexed is not a true copy of the same.

2d. Whether the said John C. Ferrill did not immediately upon the execution of said deed, or very soon thereafter, take possession of all the property, effects, and assets, owned, possessed, or claimed by said bank at the time of the execution of said deed; and state particularly and specifically in what the said property, effects, and assets consisted, describing each article of property or chose in action, how much money in gold, how much in currency, and the kind of currency.

3. Whether said money, property, effects, or assets so assigned and possessed by the said John C. Ferrill, assignee, as aforesaid, has
7 been disposed of, or any portion of the same, and if so that he may set forth fully what portion has been so disposed of, when and to whom, and for what consideration, and what account the same was so disposed of, giving a full statement of each transaction separately and distinctly.

4th. Whether the said defendant, John C. Ferrill, has delivered over or paid to any creditor of said bank any portion of the money, property, effects, or assets assigned to him or collected by him; if so, to whom, to what amount, on what terms and conditions, and when, and what he received, or what was so turned over or paid out.

5th. What amount of debts or claims against said bank have been paid and settled; what the character of the claims. State whether the bills or notes of the bank deposits or other character; set forth fully and particularly, and to whom and when paid.

6th. What was the indebtedness of said bank at the time of making said assignment to depositors, or in any other manner than by its bills or notes; to whom indebted; give a statement of such indebtedness,

and the names of the parties to whom the said bank is thus indebted, and the amount to each.

7th. What amount of the bills or notes of said bank were in circulation or outstanding at the time of making said assignment, and what amount are outstanding at the date of your answer thereto? What amount do you know of your own knowledge, or been notified of,
8 as being in the hands of other persons, and who claim them as a debt against the bank?

8. What amount of the assets of the said bank are collectible? Why they are uncollected, and where are they? What amount of the bills or notes of the said bank are unredeemed, and why are they not redeemed?

9. That the said defendants may answer this bill fully and in all respects, and to every legal intent and purpose, and make a full and perfect disclosure of all transactions in relation to his dealings with and control over the property, effects, and assets of said bank; and that the said John C. Ferrill, as such assignee or trustee, may be held to account fully and satisfactorily for all the property, effects, and assets that went into his hands as such assignee or trustee, and also for the interest, rents, issues, and profits accruing, and that he be required, by a decree of this court, to distribute, with as little delay as possible, the same among the creditors of said bank according to their respective claims, and just and equitable rights thereto.

And in order to secure your orator, and to enable him to enforce, if necessary, this just, legal, and equitable demands against the stockholders of said bank, he further prays that this honorable court will decree in his favor against the said Bank of Commerce for the amount of his claim against the said bank, less the amount decreed against the said assignee.

Lastly. Your orator prays in this behalf that your honors will,
9 whenever the safety of said trust-fund or the proper execution of said trust, shall make it necessary, interpose in his behalf, and award a writ of injunction, prohibiting and restraining the said John C. Ferrill, assignee as aforesaid, his agents, attorneys, or representatives, or any of them, from receiving, demanding, controlling, or in any way dealing with or disposing of the property, effects, and assets of said bank, or in any way transacting any of the business thereof until the further order of this honorable court.

And in this behalf, as the only safe and reliable protection to the property, effects, and assets of said bank, your orator further prays that a receiver may be regularly appointed to take charge of all the property, effects, and assets of said bank, to collect the same under the authority and direction of this court, and to hold the same subject to its further decretal orders, rulings and judgments as to this court may seem meet and proper, and cause the due execution of said trust.

And that your honors would grant unto your orator such other and further relief as to your honors shall seem reasonable and proper in the premises.

May it please your honors to grant unto your orator the writ of subpœna to be directed to the said Bank of Commerce and to the said John C. Ferrill, requiring them, and each of them, to be and appear at the clerk's office of said court at rules, to be had on the first Monday
10 in September next, then and there to answer the premises and to stand to and abide such order or decree as may be made in the premises.

HARVEY TERRY.

UNITED STATES OF AMERICA,
Southern District of Georgia:

In the clerk's office of the United States circuit court.

SAVANNAH, *June 18th*, 1869.

This day personally appeared Harvey Terry, and subscribed the foregoing bill of complaint, and made oath that the facts therein stated are true to best of his knowledge and belief.

JA'S MCPHERSON, *Clerk.*

11 *Assignment.*

STATE OF GEORGIA,
Chatham County:

This indenture, made this thirty-first day of July, in the year of our Lord one thousand eight hundred and sixty-six, between the Bank of Commerce, a body corporate and duly incorporated under the statutes of the State of Georgia, and John C. Ferrill, of the city of Savannah, county and State aforesaid, of the second part, witnesseth: Whereas the said party of the first part, by reason of losses arising from circumstances incident upon the late war, is unable to pay its just and legal debts, and whereas, at a meeting of the stockholders of said corporation, held in the city of Savannah, on the eighth day of June, in the year one thousand eight hundred and sixty-six, it was, amongst other things, resolved "That the president and board of directors of the Bank of Commerce be, and they are hereby, instructed and authorized to assign the assets and property of said corporation to some fit and proper person or persons to be selected by the said president and board of directors for the benefit of the creditors of the said corporation;" and whereas, on the twenty-first day of June, in the year eighteen hundred and sixty-six, at a meeting of the board of directors of the said corporation, it was, amongst other things, resolved that the president be, and he is hereby, directed
12 to make and execute an assignment of all the property, estate, credits, and assets of this corporation to John C. Ferrill, of Savannah, for the use and benefit of the creditors of this corporation, and to affix to said assignment the common seal of said corporation. Now this indenture witnesseth that the said party of the first part, for and in consideration of the premises, and of the sum of one dollar to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, confirmed, assigned, and transferred, and by these presents, doth grant, bargain, sell, alien, remise, release, confirm, assign, and transfer, unto the said John C. Ferrill, and his heirs and assigns, all the lands, tenements, and hereditaments, goods, chattels, merchandize, debts, choses in action, sum and sums of money due, owing, and belonging to the said party of the first part, and all securities had, taken, and obtained for the same, and all the estate, right, title, interest, property, and claim of the said party of the first part in and to the same, according to a schedule thereof, hereto annexed marked Schedule A: To have and to hold the same, with the appurtenances, unto the said John C. Ferrill, and his heirs, executors, administrators, and assigns, upon the conditions and trusts, nevertheless, that the said John C. Ferrill shall forthwith take possession and seizen of the premises, and within such convenient time as to him shall
13 seem meet, by public or private sale as he may deem best, and for the best price that can be procured, shall convert all and sin-

gular the premises into money, and as soon as possible collect all and singular the debts and sum and sums aforesaid, and after deducting the costs and charges of these trusts, shall pay and apply the moneys arising therefrom in manner following, that is to say, he shall pay all moneys received by him to the creditors of the said party of the first part, ratably and in equal proportions according to their several and respective legal priorities; and the said party of the first part, in furtherance of the premises, doth hereby make, constitute, and appoint the said John C. Ferrill, its true and lawful attorney, irrevocable, in his name or otherwise, and for the trusts aforesaid to ask, demand, recover, and receive of and from all and every person and persons, all and singular the property and estate, goods, chattels, wares, merchandize, debts, choses in action, sum and sums of money, and demands due and owing or belonging to said party of the first part, and upon all receipts and deliveries in the premises due acquittances and discharges in his name or otherwise to make, execute, and acknowledge, and in default of delivery or payment in the premises, to sue, prosecute, and implead for the same as he may see fit, and to compound and agree, for all or any part thereof, and upon such composition or other agreement to make due acquittances
14 and releases, and also for all or any of the purposes aforesaid, to constitute one or more attorneys under them. And the said John C. Ferrill doth hereby covenant for himself, his heirs, executors, and administrators, that he will keep a just and true account of all the moneys received by him, by reason of the premises, together with the time when and the persons from whom the same shall be received; and that he will well and truly distribute the same according to the trusts before mentioned. And further that he will faithfully and justly conduct himself according to the best of his skill, power, and ability in the execution of the trusts reposed in him in all respects whatsoever, and that he will from time to time, and whenever called upon by the said party of the first part or its authorized agent, render and give a full, fair, and complete statement of all his actings and doings in the premises.

In witness whereof the president of the said the Bank of Commerce hath hereunto set his hand and caused to be affixed the common seal of said corporation, and the said John C. Ferrill hath hereunto set his hand and seal the day and year above written.

G. B. LAMAR,
President Bank of Commerce.
JOHN C. FERRILL. [L. S.]

Signed, sealed, and delivered in presence of—three letters having been first erased on the fourth page—
A. L. LAWSON,
THO'S E. LLOYD,
Not. Pub. Chatham County.
Attest:
JOHN C. FERRILL, *Cashier.*
[SEAL OF BANK OF COMMERCE.]

This indenture stamped with one stamp U. S. int. revenue for $1—power of att'y.

15 SCHEDULE A.

List of assets and property of the Bank of Commerce.

Bonds of the city of Columbus, par value			$30,000
Bonds of the Pensacola & Florida Railroad, which have been lost, but which can be established, par value			10,000
Banking house & lots adjoining building, N. W. corner Bryan & Drayton streets, Savannah.			
Exchange discounted:			
17th Feb'y, 1858.	G. W. Lamar, bal	3,043 17	
19th " "	do.	2,052 84	
			5,096 01
" " 1861.	I. B. Moore		900 45
	At New Orleans, La:		
" " 1861.	William Bailey		16,864 11
	At Charleston, S. C:		
28th July, 1860.	H. L. Smith		398 85
	Lying over:		
26th April, 1861.	R. Z. Pickney		339 15
			23,598 57
Notes discounted:			
24th Sept., 1864.	William Morel	400 00	
25th " "	P. Poullain	2,000 00	
7th Nov.,' 1864.	do.	9,067 33	
1st Oct'r, "	A. Poullain	2,000 00	
12th Nov., "	A. M. Ross	1,753 08	
18th " "	E. C. Hough	8,000	
21st Oct'r, "	L. M. Law	23,220 41	
21st Oct'r, "	L. M. Lamar	593 73	
24th Nov., "	do.	21,757 52	
28th Oct'r, "	Z. N. Winkler	250	
5 " "	do.	1,000	
16 8th Nov., 1864.	John F. Tucker	15,000	
21st Oct'r, "	Julian Hartridge	3,055 25	
6th Oct'r, 1864.	Henry Taylor	5,705 24	
16th Nov , "	C. A. L. Lamar	53,844 06	
7th " "	Simon Gertsman	18,000 00	
29th " "	J. D. Smith	250 00	
29th " "	W. H. Bullock	600 00	
18th " "	J. B. Shann	250 00	
11th Dec'r, 1860.	D. H. Stewart	500 00	
3d May, 1862.	W'm B. Jackson	270 00	
17th " "	Wright and Jackson	400 00	
20th Feb'y, 1861.	W. E. Lang	250 00	
29th Dec., 1862.	W'm F. Preston	50 00	
13th Aug't, 1859.	P. B. Allston	354 27	
			145,344 48
Notes discounted in judgment:			
8th Dec'r, 1860.	E. T. Wilson	101 21	
25th Aug't, "		500 00	
			601 21
Overdrafts:			
F. S. Gue		27 44	
William Morel		55 66	
H. W. Connor & Co		30 00	
Simon Gertsman		221 50	
John W. King		2 00	
J. S. Green, adm'r		20	
John F. Tucker		2,791 32	
Osceola Buttler		79 24	
James G. Watts		2 98	
C. A. L. Lamar		50,858 63	
R. J. Godfrey		27 27	
17 John A. Wragg		133 94	

I. Burke	11,617 49	
Z. Walker	559 94	
R. Habersham & Sons	902 93	
E. Ehrlich	13,527 48	
W. Battersby & Co	7,500	
		88,338 02
Bonds of the State of Georgia, issued in 1862	300,000	
Certificates of the treasurer of the State of Georgia for 6 & 8 per cents	360,000	
		660,000
Bonds of the State of South Carolina, issued in 1862		100,000
Bonds of Confederate States	65,000	
Confederate States treasury notes	75,000	
do. 4 per cent. confederate	238,200	
		378,200

Special notes:

8th Dec'r, 1864.	A. C. Davenport	60 35	
15th " "	A. S. Jones	700 00	
15th " "	I. Burke	700 00	
15th " "	W. B. Lamar	702 60	
15th " "	C. A. L. Lamar	700	
15th " "	Charles Green	700	
			3,562 95
Cash in U. S. currency			22,076 69
Advances to Savannah Flouring Mill			6,738 15

RECAPITULATION.

Bonds of city of Columbus		30,000
Bonds Pensacola & Florida R. R. (lost)		10,000
Banking-house & *banking* adjoining. N. W. corner Bryan & Drayton streets Sav'h.		
18 Exchange discounted		23,598 57
Notes discounted		145,344 48
do. in judgment		601 21
Certificates		88,338 02
Bonds of State of Georgia, 1862	300,000	
Certificates for bonds 6 & 8's	360,000	
		660,000
Bonds State of North Carolina, 1862		100,000
Bonds Confederate States	65,000	
4% certificates do.	238,200	
Confederate States treasury notes	75,000	
		378,200
Special notes		3,562 95
U. S. currency		22,076 69
Advances to Savannah Flouring Mill		6,738 15
Circulation		$763,278

Recorded July 31, 1866.

STATE OF GEORGIA, *Chatham County*:

I, Richard W. White, clerk of the superior court, of Chatham County, and State aforesaid, do hereby certify that the foregoing pages contain a true and faithful copy of the original deed of assignment and schedule as appears of record in county records, book xxx, folios 518, 519, 520, 521.

[5-ct. stamp, int. rev.]

In witness whereof I have hereunto set my official signature and seal of this court at Savannah, Georgia, this eighteenth day of June, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] RICHARD W. WHITE,
Clerk S. C. C. C.

19 *Judge's order to show cause.*

At chambers, Oct. 15th, 1869. Let the defendants, on the 21st day

of Oct., inst., at 10 a. m., at the U. S. court-room at Savannah, Ga., show cause why the writ of injunction prayed for should not be granted & a receiver appointed.

JOHN ERSKINE,
U. S. Judge.

(Endorsement:) In the fifth circuit court of the United States, southern district of Georgia, September rules, 1869. Harvey Terry, complainant, vs. Bank of Commerce and John C. Ferrill. In equity. Filed July 12, 1869. Ja's McPherson, clerk. Stone, sol. for complain't. Final decree vs. B'k of Commerce, Dec. 15, 1870.

Subpœna.

The President of the United States, ss. To the Bank of Commerce and John C. Ferrell:

For certain causes offered before the judges of the fifth circuit court of the United States for the southern district of Georgia, in equity, you and each of you are hereby commanded and strictly enjoined, that laying all other matters aside, and notwithstanding any other excuse you personally be and appear at the clerk's office of the said court, in the city of Savannah, at rules to be had on the first Monday in
20 September next, to answer to those things which shall then and there be objected to you, and to do further and receive what the said court shall have considered in this behalf, and this you may in no wise omit under penalty of five hundred dollars; and have here this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twelfth day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] JA'S McPHERSON, *Clerk.*

MEMORANDUM.—The defendants are required to enter their appearance in the suit above state' in the clerk's office on or before the day at which this writ of subpœna is returnable, otherwise the bill may be taken pro confesso.

(Endorsement:) In the fifth circuit court of the United States for the southern district of Georgia, September rules, 18 . In equity. Harvey Terry, complainant, and Bank of Commerce and John C. Ferrill, defendants. Original subpœna, filed July 20, 1869. Ja's McPherson, clerk. A. W. Stone, compl't solicitor.

Service by marshal.

I have this day served the defendants, Bank of Commerce, John C. Ferrill, assignee, and John C. Ferrill personally, with copies of the within subpœna at Savannah, Ga., July 20, 1869. The return of

C. T. WATSON,
U. S. Dep'ty Marshal.

21 UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the fifth circuit court of the United States of America for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said district, on the

twenty-second day of October, in the year of our Lord one thousand eight hundred and sixty-nine, present the honorable John Erskine, U. S. judge for the district of Georgia.

HARVEY TERRY, COMPL'T,
vs.
BANK OF COMMERCE ET AL., DEFT'S. } In equity.

Leave to amend bill.

On motion of solicitor for complainant it is ordered by the court that complainant have leave to amend his bill.

JOHN ERSKINE,
OCT. 22d, 1869. *U. S. Judge.*

(Endorsement:) In the fifth circuit court of the United States for the southern district of Georgia, Harvey Terry vs. Bank of Commerce, J. C. Ferrill, assignee. Leave to amend bill. Filed the 22d day of Oct., 1869. Ja's McPherson, clerk. Dougherty & Stone, pl'ff's att'ys.

22 *Order for defend't to answer Dec'r rules.*

On motion of solicitor for the complainant in the above-entitled cause, it is ordered by the court that the defendant answer said bill on or before rules day in December next, and that the said application be heard in open court or at chambers as soon as the judge is able to hear argument thereon.

JOHN ERSKINE,
U. S. Judge.

(Endorsement:) In the fifth circuit court of the United States for the southern district of Georgia, Harvey Terry vs. Bank of Commerce & J. C. Ferril, ass'ee. Order def't to answer Dec'r rules and for hearing, &c. Filed the 19 day of Nov., 1869. Ja's McPherson, clerk. Stone, att'y.

Order to amend bill.

On motion of solicitor for complainant it is ordered by the court that the complainant have leave to amend his bill by inserting the word "thirty" before the word "thousand" in the sixteenth line from the top of the second page in said bill.

JOHN ERSKINE,
Dec. 15, 1870, by the court. *U. S. Judge.*

(Endorsement:) In 5 C. C. of U. S. S. dist. of G. Harvey Terry, complainant, vs. Bank of Commerce & John C. Ferrill, assignee. Order to amend bill. Filed Dec. 15, 1870. Ja's McPherson, clerk. Stone.

23 *Amendment to bill of January 8, 1870.*

The complainant, by leave of the court first had and obtained, amends his bill in said cause as follows:

Your orator further showeth that the said John C. Ferrell has heretofore and now is appropriating to his own use and in his own business, directly or indirectly, and to the use of said bank, and to the use and

benefit of his co stockholders and other persons, a large portion of the funds so in his hands as such assignee. That he has used, directly and indirectly, portions of the same, and is still using the same.

And your orator charges that at the time of said assignment Gazaway B. Lamar, the president of said bank, was indebted to said bank a large sum of money, to wit, ten thousand dollars, or other large sum, which sum was payable in gold coin or its equivalent, and that subsequent to said assignment the said John C. Ferrill, in combination with the said Lamar, and in order to promote their own interest and to defraud your orator and other creditors of said bank, permitted said Lamar to pay off said indebtedness of ten thousand dollars in the bills or notes of said bank received by said Ferrill at par, and the said assignee surrendered to said Lamar his promissory notes or promises to pay said sum, which bills or notes of said bank, your orator charges, were not, at the
24 time, according to the representations of said Ferrill, *with* more than ten cents on each dollar thereof in the currency of the United States. And your orator further charges that the said Ferrill is largely in debt and unable to pay the same, and, as your orator is informed and believes, is insolvent.

From all which actings and doings it is manifest, and so your orator expressly charges and states, that the large and valuable fund in the hand of the said John C. Ferrill, who has never given any security or made any returns or exhibits of his actings and doings, as required by law, is unsafe, insecure, and in imminent danger of being wasted, misapplied, and a total loss to those interested in the same. And your orator prays that the said defendants may answer said amended bill as fully as if the same was hereinafter repeated and they thereunto specially interrogated, and that in the same manner as to remembrance, information, and belief as required in said original bill; and that the said John C. Ferrill may fully answer and set forth—

First. Whether he was not the cashier of said Bank of Commerce at the time of making said assignment, and whether ón the making of said assignment and acceptance by him the possession and control of all the property, assets, and books of said bank did not pass to him as such assignee, and if the same is not so now held by him.

25 2nd. Whether the funds and property of said bank so assigned to the said John C. Ferrill, or any portion thereof, has been at any time or in any manner whatever appropriated, loaned, hypothecated, or in any other manner applied to any use or purpose whatsoever. If so, what portion so used, and what use made of it, and when so used, and for how long a period, and what rents, issues, and profits realized therefrom. And whether the said money has all the time been and now is in such a situation and position that the same can be had and forthcoming on the mere application, without more, of the said assignee, and where the same is at this time—its situation, position, and condition.

3rd. Whether the said John C. Ferrill is not largely in debt, and for more than the value of his property held in his own right, and is not insolvent, and that he may set forth, distinctly and definitely, the property owned by him, and the value thereof, and the amount of his indebtedness, exclusive of such as may arise from the trust created by said assignment, and that he may answer the premises fully.

A. W. STONE,
W'M DOUGHERTY,
Solicitors for Complainant.

26 UNITED STATES OF AMERICA,
Southern District of Georgia:

Before me in person came Harvey Terry, the complainant in the foregoing amended bill, and on oath says that the matters and things set forth in said orginal bill, and the foregoing amendment thereto, so far as relate to his act and deed, are true of his own knowledge, and so far as the same relate to the acts and deeds of others he believes them to be true.

HARVEY TERRY.

Sworn to and subscribed before me this seventh day of January, 1870.
JA'S McPHERSON, *Clerk.*

(Indorsement:) U. S. cir. court, so. dist. of Geo. In equity. Harvey Terry, compl't, and Bank of Commerce and John C. Ferrill, ass'ee, defendant. Amendment to bill. Filed under order of court granted Jan'y 8, 1870. Filed Jan'y 8, 1870. Ja's McPherson, clerk. W. Dougherty, sol.

Order of court granting leave to amend bill.

It is ordered on the application of complainant, that he have leave to amend the bill in the above case by adding the amendment this day filed to the charging part of said bill.

In open court Jan'y 8, 1870.

JOHN ERSKINE,
U. S. Judge.

27 (Endorsement:) In the fifth circuit court of the United States for the southern district of Georgia. Harvey Terry vs. Bank of Commerce & John C. Ferrell, ass. Order of court granting leave to amend bill, &c., filed the 8th day of Jan'y, 1870. Ja's McPherson, clerk. W. Dougherty, att'y.

Motion for receiver and order appointing same.

The motion for a receiver having been heard and considered, it is ordered and decreed that Miller Ketchum be, and is hereby, appointed the receiver of this court, to receive, collect, keep, and dispose of the property and assets of the said Bank of Commerce, under the direction and order of this court.

The said receiver shall, before entering on the duties of his office, execute and file his bond, with sureties approved by this court, in the sum of seventy-five thousand dollars, conditioned for the faithful performance of his duties as receiver, and his obedience to all orders and decrees of this court in the premises.

The said receiver shall forthwith proceed to collect all the debts and assets of the said bank, and to that end is authorized to use the name of the said assignee thereof.

28 And the said John C. Ferrill, assignee as aforesaid, is hereby directed to deliver under oath to the said receiver, forthwith, all the assets, property, and effects of said bank, and all the books, papers, title-deeds, securities, and memoranda connected with, and explanatory of, the business of said bank, in his possession, or in the possession of his clerks or agents.

And the said defendants, its and his agents and attorneys, are hereby

enjoined from all interference with the property, assets, and effects of said bank and its affairs beyond the delivery over of the same to the said receiver until the further order of this court, or of a judge thereof.

In open court, Jan'y 18, 1870.

JOHN ERSKINE,
U. S. Judge.

(Endorsement:) In the fifth circuit court of the United States for the southern district of Georgia. Harvey Terry, comp't, vs. Bank of Commerce and John C. Ferrill, def'ts. Motion for a receiver and order appointing same. Entered and filed January 18, 1870. Ja's McPherson, clerk. A. W. Stone, Wm. Dougherty, solicitors for complainant.

Order appointing a commission.

The defendant The Bank of Commerce having made no answer to the bill of complaint in this cause, and the same having been
29 taken as confessed as to the said defendants,

It is ordered by the court that the said cause, so far as relates to the said defendant The Bank of Commerce, be referred to Andrew Sloan, who is hereby appointed a commissioner of this court for the purpose of ascertaining the amount due the complainant from the said defendant The Bank of Commerce, and that said commissioner must report to this court on the first day of the next term thereof, of his actings and doings in the premises.

JOHN ERSKINE,
U. S. Judge.

JAN'Y 18, 1870.

(Endorsement:) In the fifth circuit court of the U. S., southern dist. of Ga. Harvey Terry vs. Bank of Commerce, & John C. Ferrill, ass'ee. Order appointing a commissioner to report entered and filed Jan'y 18, 1870. Ja's McPherson, clerk. Stone.

Suggestion of death of John C. Ferrill.

And now, at this term of the court, comes Thos. E. Lloyd, solicitor of the above defendants, and suggests upon the record the death of John C. Ferrill, one of the defendants in said cause.

W. B. WOODS, *Judge.*

(Endorsement:) U. S. cir. court, so. dist. of Geo. Harvey Terry, compl't, and Bank of Commerce, and J. C. Ferrill, defendants. Suggestion of death of John C. Ferrill, one of defendants. Filed April 11, 1870. Ja's McPherson, clerk. T. E. Lloyd, sol. for d'f't.

30 *Report of Andrew Sloan, commissioner.*

An order having been granted in above stated case on the 18th day of January last, by this honorable court appointing Andrew Sloan a commissioner thereof for the purpose of ascertaining the amount due the complainant, Harvey Terry, from the said defendant "The Bank of Commerce, and requiring said commissioner to report, at this term of said court, his actings and doings in the premises: Now comes the said commissioner and states that he has examined into the matters so referred to him, and finds the said defendant "The Bank of Commerce

to be due the said complainant twenty-three thousand two hundred and ninety-seven dollars, on the bills of said defendant The Bank of Commerce, in possession of said complainant, and on file with the clerk of said court; all of which is respectfully submitted, &c.

ANDREW SLOAN,
Commissioner, &c.

Submitted in open court, April 20, 1870.

(Endorsement:) In U. S. circuit court, sou. dist. of Georgia. Harvey Terry, compl't, &c., and The Bank of Commerce, Jno. C. Ferrill, assignee. In chancery. Report of Andrew Sloan, commissioner, &c. Filed April 20, 1870. Ja's McPherson, clerk.

31 UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the fifth circuit court of the United States of America for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said district, on the fifteenth day of December, in the year of our Lord one thousand eight hundred and seventy.

Present, the honorable John Erskine, U. S. judge of the districts of Georgia.

HARVEY TERRY, COMPL'T,
vs.
BANK OF COMMERCE ET AL., DEF'TS. } In equity.

Order affirming report of commissioner, &c., &c.

It appearing to the court that service of said bill was perfected on the defendant more than thirty days prior to December rules, 1869, and the defendant having failed to plead, answer, or demur at said December rules of this court, an order was passed taking said bill as confessed; that, on the eighteenth day of January, 1870, this court, on the motion of A. W. Stone, solicitor for complainant, appointed Andrew Sloan, esq., a commissioner to ascertain the amount due the complainant, from the said defendant, The Bank of Commerce, and to make report thereof at this term of this court.

And the said commissioner having made his report, in terms of the said order, that he finds the defendant The Bank of Commerce
32 indebted to the complainant upon the bills or notes of said Bank of Commerce, the defendant, said notes or bills in the possession of said complainant, and now on file in this court the sum of twenty-three thousand two hundred and ninety-seven dollars.

It is thereupon ordered and decreed by the court that the report of said commissioner be, and is hereby, in all things affirmed, and that the bill be taken as confessed as against the said defendant The Bank of Commerce, and that the said complain't have leave at this term to obtain and enter a final decree in said cause.

In open court, Dec'r 15, 1870.

JOHN ERSKINE,
U. S. Judge.

(Endorsement:) In the fifth circuit court of U. States, southern dist. of Ga. Harvey Terry, complainant, and Bank of Commerce and John C. Ferrill, assignee, defendants. Order affirming report of commissioner and taking bill pro confesso. Filed Dec'r 15, 1870. Ja's McPherson, clerk. Stone.

Final decree.

This cause came on to be heard at this term, and the defendant The Bank of Commerce, having failed to plead, answer, or demur to
33 said bill of complaint, and an order having been taken taking the said bill as confessed against the said defendant, The Bank of Commerce:

Thereupon it is ordered, adjudged, and decreed that the complainant do recover of the said defendant The Bank of Commerce the sum of twenty-three thousand two hundred and ninety seven dollars, with interest thereon from the date of this decree, and the further sum of eighty dollars and ninety-three cents for his cost; and that the clerk of this court do isssue an execution against the said defendant The Bank of Commerce for the aforesaid sums of money in accordance with this decree.

Dec'r 15, 1870. In open court.

JOHN ERSKINE, *Judge.*

(Endorsement:) In the fifth circuit court of the United States, southern dist. of Georgia. Harvey Terry, complainant, and Bank of Commerce & John C. Ferrill, assignee, defendant. Final decree. Filed Dec'r 15, 1870. Ja's McPherson, clerk. Stone.

34 *Fieri facias vs. The Bank of Commerce.*

UNITED STATES OF AMERICA,
Southern District of Georgia, Fifth Circuit Court, ss:

The President of the United States to the marshal of the districts of Georgia, greeting:

It is hereby commanded that of the goods and chattels, lands and tenements of The Bank of Commerce you cause to be made the sum of twenty-three thousand two hundred and ninety-seven dollars, principal, with interest thereon from December fifteenth, eighteen hundred and seventy, which Harvey Terry, lately, to wit, on the 15th day of December, A. D. 1870, in the fifth circuit court of the United States for the southern district of Georgia, recovered against it for his damages which he had sustained on occasion of the not performing certain promises and undertakings then lately made by the said Bank of Commerce to the said Harvey Terry; and also eighty dollars and ninety-two cents, which in the said court were adjudged to the said Harvey Terry for his costs and charges by him about his suit in that behalf expended, whereof the said The Bank of Commerce was convicted as appears of record; and have you that money before the judges of said court, in the term of April next, to render to the said Harvey Terry for his damages, costs, and charges aforesaid, together with this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the
35 Supreme Court of the United States, this second day of January, in the year of our Lord one thousand eight hundred and seventy-one.

Plff's Att'y's.

JAMES MCPHERSON, *Clerk.*

Service.

I have made diligent search and can find no goods or chattels, lands or tenements of the within defendant in my district whereof I can make the amount of the within execution or any part thereof.

W'M H. SMYTH,
U. S. Marshal.

Dated SAVANNAH, GA., *January* 18, 1871.

(Endorsement:) Fifth circuit court of the United States for the southern district of Georgia. To April term, 1871. Harvey Terry versus The Bank of Commerce. Returned and filed 18th Jan'y, 1871. Ja's McPherson, clerk. A. W. Stone, pl'ffs att'n'y. Returned nulla bona, Jan'y 18, 1871.

36 UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the fifth circuit court of the United States of America for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said district, on the sixteenth day of December, in the year of our Lord one thousand eight hundred and seventy-one.

Present, the honorable W'm B. Woods, U. S. judge of the fifth judicial circuit and the honorable John Erskine, U. S. judge for the districts of Georgia.

HARVEY TERRY, COMPL'T,
vs.
THE BANK OF COMMERCE, DEF'T. } In equity.

Order to make publication for all parties to file claims, &c.

It being represented to the court that there are other parties than those before the court interested in the distribution of the assets involved in said cause:

That the interests of all interested may be protected so far as practicable, it is ordered and decreed that all persons having demands against said Bank of Commerce, shall, on or before the first Monday in April next, at rules, cause themselves to be made parties to said cause with suitable and proper averments asserting their respective claims.

And it is further ordered that the clerk of this court cause this order and decree to be published once a week for three months before the next term of this court, in a newspaper, published in the city of Macon,
37 Georgia, and city of New York, and that the expense of said publication be paid out of the fund in the hand of the receiver of said bank.

Granted in open court, Dec'r 16, 1871.

W. B. WOODS, *Judge.*

(Endorsement:) U. S. cir. court, so. dist. of Georgia. In equity. Harvey Terry, complainant, and the Bank of Commerce, defendant. Order to make publication for all parties to file claims, &c., vs. defend't. Filed Dec'r 16, 1871. Ja's McPherson, clerk. A. W. Stone, sol. for comp't.

38 UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the fifth circuit court of the United States of America for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said district, on the twenty-second day of May, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable William B. Woods, U. S. judge for the fifth judicial circuit, and the honorable John Erskine, U. S. district judge.

HARVEY TERRY ET AL., COMPL'TS,
vs.
BANK OF COMMERCE ET AL., DEF'D'TS. } In equity.

Order for receiver to pay into court certain moneys.

On motion of the sol'rs for the receiver in the above cause, it is ordered that Miller Ketchum, appointed receiver of said Bank of Commerce, be authorized and required to pay into the registry of this court the amount of cash in his hands, as shown by his report filed in this court under its order passed at this present term, and that the receipt of the clerk of this court shall be his voucher for said payment.

May 22, 1873.

W. B. WOODS, *Judge.*

HARTRIDGE & CHISHOLM,
Sol'rs for Receiver.

(Endorsement:) Fifth circuit court of United States for southern district of Georgia, April term, 1873. Harvey Terry et al., compl'ts, vs. The Bank of Commerce, John C. Ferrell, assignee, &c., def'ts. In equity. Order for the receiver, Miller Ketchum, to pay into registry of court certain money. Filed May 22, 1873. Ja's McPherson, clerk.

39 *Service by marshal.*

I have this day served a copy of the within writ upon the within named Miller Ketchum, personally, at Savannah, G'a.

May 31st, A. D. 1873. The return of—

W'M H. SMYTH,
U. S. Marshal.
By A. B. SMITH, *Dep'ty.*

Order appointing W. G. Mann special master, &c.

Whereas various claimants have appeared and filed their several claims in this cause pursuant to an order of this court, dated Dec. 16, 1871, now, on motion of D. T. Corbin, solicitor for Harvey Terry, complainant, it is ordered that it be referred to W. Grayson Mann, esq., as special master in chancery, to count the bank-notes filed in said cause, not before counted by a master in the cause, and to take testimony and report to this court—

1st. The character of the several claims set up by the several claimants against The Bank of Commerce, and upon what evidence of indebtedness they are severally based and the amount of money due the several claimants thereon; and whether any of said claimants, and, if so, who,

are entitled to priority in payment out of the fund in court, and the reason for said priority?

2. Whether any one or more of said claimants or any person or
40 party for them; and, if so, who, since July 31, 1866, by suit or otherwise have pressed said claims or any portion thereof for payment against The Bank of Commerce, its officers, stockholders, assignee, or debtors; and if suit has been brought thereon, to what result the same has been carried?

3. Whether any portion of any or all of said several claims has been paid; if so, how much, by whom, and when, and if by the Bank of Commerce, its assignee, stockholders, or debtors, or any of them, how he or they paid the same, and upon what conditions, if any?

4. The said master shall close the testimony upon the several matters aforesaid, and file his report on or before the 1st day of November next.

W. B. WOODS, *Judge.*

(Endorsement:) U. S. cir. court so. dist. of Georgia. In equity. Harvey Terry, compl't, vs. Bank of Commerce & J. C. Ferrill, ass'ee, def'ts. Order appointing W. G. Mann special master to count bank-bills and take testimony in reference thereto. Filed May 22, 1873. Ja's McPherson, clerk. D. T. Corbin, sol. for comp't.

41 *Report of receiver.*

Miller Ketchum, receiver of the Bank of Commerce, in account with the U. S. circuit court.

1870.				
M'c'h 10.	To cash from John O. Ferrill	1,895 93		
May 16.	" " " sale of furniture	207 48		
Sept. 28.	" " " John O. Ferrill	153 05		
Oct. 21.	" " " sale of counter	107 71		
1871.				
Feb'y 2.	" " " water-rent from Southern B'k	25 50		
1872.				
Feb'y 19.	" " " sale of safe	5		
1873.				
May 27.	" " " John O. Ferrill	177 97		
	Rent of buildings from May 1st, 1873	11,450		
	Interest to July 1st, 1873	849 80		
				14,872 44

CR.

By advertising & water-rent as per statement	269 95		
" premiums on insurance " "	715		
" repairs to buildings " "	1,333 16		
" State, county, & city taxes " "	2,205 07		
" legal advice	250		
" retainer to John O. Ferrill, as per order U. S. court	500		
" " " Tho's E. Lloyd, " " " " "	500		
			5,773 18
Cash on hand			$9,099 26

August 1st, 1873.

MILLER KETCHUM, *Receiver.*

E. & O. E.

42 REPAIRS TO BUILDINGS.

1870.			
June 3.	To cash paid repairs office Walker & Allen	23 50	
Nov. 7.	" " " plastering & kalsomining bank	50	
" "	" " " repairing roof	17 50	
" 23.	" " " new roof, b'k building	250	

1871.					
Jan'y 5.	" " "	Murphy & Clark, for painting	200		
" 7.	" " "	repairs as per bills	87	30	
" 20.	" " "	Douglass, for grates, &c	63		
Feb'y 2.	" " "	repairs to safe	30		
" 9.	" " "	Murphy & Clark, for painting &c	118	20	
" 17.	" " "	" " " painting office W. & A.	40		
" "	" " "	Dooly, for repairs	7	50	
" "	" " "	Roberts, painting roof	14		
" "	" " "	boy for cleaning yard	6		
M'c'h 7.	" " "	Murphy & Clark, as per bill	45		
" "	" " "	Douglass " " "	6	50	
Apr. 17.	" " "	repairs office Stone	23		
Nov. 8.	" " "	Grimball & Co., repairs in cellar	8		
" "	" " "	Henry Giles, for grate	7	50	
1872.					
Feb'y 15.	" " "	repairs rooms M. B. Millen	20		
" "	" " "	Halligan, for plumbing	95	54	
Apr. 13.	" " "	repairs office Walker & Allen	5	75	
Nov. 6.	" " "	Murphy & Clark, for painting	54	90	
Sept. 10.	" " "	Halligan, for plumbing	10		
Dec. 18.	" " "	" " "	5		
1873.					
Jan'y 11.	" " "	Walker, as per bill	8	70	
" 16.	" " "	locks and vaults	100		
" "	" " "	repairs to gas-fixtures	19	27	
Feb'y 17.	" " "	Robider, for plumbing	7		
M'c'h 12.	" " "	Halligan " "	10		
					$1,333 16

43 ADVERTISING & WATER-RENT.

1870.					
Oct. 24.	To cash paid for water-rent		46	50	
" 26.	" " " " advertising rooms to rent		14		
Nov. 22.	" " " " " " " "		16	75	
1871.					
Feb'y 2.	" " " " water-rent		46	50	
1872.					
" 15.	" " " " " "		46	50	
Apr. 13.	" " " " advertising in N. Y. Tribune		78		
" "	" " " " " " Macon Union		21	70	
					269 95

INSURANCE.

1870.					
Apr. 26.	To cash paid premium		50		
May 9.	" " " "		62	50	
July 15.	" " " "		125		
1871.					
Feb'y 9.	" " " "		50		
June 3.	" " " "		75		
1872.					
Feb'y 15.	" " " "		50		
" "	" " " "		68	75	
Aug. 19.	" " " "		50		
" "	" " " "		43	75	
1873.					
Jan'y 29.	" " " "		70		
May 8.	" " " "		70		
					715

STATE COUNTY, & CITY TAXES.

1870.					
M'ch 12.	To cash paid State taxes		299	03	
" 17.	" " " " city "		273		
July 2.	" " " " " "		187	50	
Nov. 18.	" " " State "		157	73	
Dec. 14.	" " " city "		93	75	

1871.								
M'ch	17.	"	"	"	"	"	.....	93 75
Oct.	17.	"	"	"	"	"	to Dec. 31st	375
1872.								
Feb'y	15.	"	"	"	State	"	.....	157 73
Aug.	19.	"	"	"	city	"	.....	206 25
Nov.	13.	"	"	"	"	"	.....	206 25
Sept.	25.	"	"	"	State	"	.....	51 95
1873.								
May	13.	"	"	"	city	"	.....	103 13
								2,205 07

Report of Miller Ketchum, the receiver, with check for amount in hand, $9,099.26. Filed August 10th, 1873.

JA'S McPHERSON, *Clerk.*

44 *Report of W. Grayson Mann, special master.*

To the honorable the judges of said court:

In pursuance of a decretal order made and entered in this cause, and bearing date on the twenty-second day of May, eighteen hundred and seventy-three, at the last April term of this court, by which it was referred to W. Grayson Mann, as special master in chancery, to count the bank-notes filed in said cause not before counted by a master, and to report to this court the character of the several claims set up by the several claimants against said Bank of Commerce, and report upon what evidence of indebtedness they are severally based, and the amount of money due to the said several claimants thereon, and whether any of said claimants, and, if so, who, are entitled to priority in payment out of the fund in court, and the reason for said priority.

I, W. Grayson Mann, special master as aforesaid, do respectfully report that I caused to be published once a week for one month, to wit, from the thirty-first of May to the thirtieth of June, 1873, in "Savannah News" and the "Atlanta Constitution," a notice, of which the following is a true copy:

In the fifth circuit court of the United States for the southern district of Georgia.

HARVEY TERRY & OTHERS, COMPL'TS, *and* THE BANK OF COMMERCE & J. C. FERRILL, assignee, et al., defendants. } In equity.

45 All persons interested are hereby notified that by virtue of an order granted by the Hon. William B. Woods, one of the judges of said court, the undersigned has been appointed special master in chancery in the aforesaid cause to examine into and take an account of the amount, character, and by whom presented, of all claims of any and all persons whomsoever against the fund assigned by said Bank of Commerce, and now in court for the benefit of its creditors, or in any manner arising out of, or connected with, the execution of said trust, and report the same to the next term of said court.

And that in accordance with said order the undersigned will hold a sitting at his office in the city of Savannah, at 10 o'clock a. m., on the 3d day of July next, and report upon the said several claims upon said fund.

W. GRAYSON MANN,
Special Master, etc.

SAVANNAH, *May* 29, 1873.

1st. In accordance with said notice I held sittings from day to day from the said 3rd day of July to the 10th of July, and from the 18th of October to the 15th of November, 1873, and proceeded to investigate the matters so referred to me, and after taking due proof I find and report that in pursuance of an interlocutory decree rendered in this cause at the November term 1871, of this honorable court, notifying all parties interested in the distribution of the assets involved in said cause, and having demands against said Bank of Commerce, to cause themselves to
46 be made parties to said cause, with suitable and proper averments asserting their respective claims, the claimants, whose names appear in the following Schedule A did file their applications in compliance with said order, and having counted the notes of said bank filed by them as the evidence of indebtedness of said bank upon which their several claims are based, and no objections having been made to said claims, I report in favor of the payment pro rata of the following amounts of money to said claimants out of the assets of said bank, they occupying as bill-holders the position of preferred creditors of the same:

SCHEDULE A.

Claimants.	Applications; when filed.	Amounts.
March, Price & Co	April 1, 1872	$943 00
A. Boggs	" "	290 00
W. P. Goodal	" "	271 00
John King	March 18, 1872	1,687 00
Leah Frankenstein	March 4, 1872	369 00
Branch Sons & Co	July 5, 1873	7,732 00
C. L. Gilbert	July 9, 1873	3,581 00
J. L. Villalonga	" " "	700 00
Joseph Lippman	" " "	714 00
G. B. Lamar	" " "	118,920 00
Edwin Parsons	March 25, 1872	8,856 00
Adolph Abraham	" " "	3,588 00
		$147,651 00

I also find and report that I have counted the notes of said bank filed at various periods with J. C. Ferrill, assignee, Millar Ketcham,
47 receiver, and with myself as special master, by the several claimants whose names appear in the following Schedule B, said claimants not having filed any application to cause themselves to be made parties to said cause in compliance with said interlocutory order of this honorable court, rendered at the November term, 1871, as aforesaid; and no objections having been made to the following claims, which are all based upon said bank-notes filed by claimants in support of their several claims. I report in favor of the payment of the following amounts of money to said claimants pro rata out of the assets of said bank, they occupying as bill-holders the position of preferred creditors and entitled before distribution to their share of the assets:

SCHEDULE B.

W. C. McClare	$9,733 00
B. H. Clorves	97 00
Jane Reilly	62 00

	A. Minis	15 00
	Lewis Bruner	40 00
	W. Cumming	90 00
	I. I. Cohen & Sons	314 00
	John Neal	20 00
	I. Kohns	18 00
	Mary Ann Johns	22 00
	John J. Cohen	56 00
	Johanna Dillon	22 00
	Ann Smith	200 00
	R. T. Burch	10 00
	R. H. Tatem	64 00
	Capt. Christain	81 00
48	Levy Bery	$2,417 00
	Henry R. Jackson	2,468 00
	I. and T. Green	5,685 00
	Bank of Tennessee	1,271 00
	Thomas Sweeney	268 00
	William B. Berry	1,780 00
	Ch. Goodman	188 00
	J. R. Saussy	13 00
		$24,834 00

A number of notes of said bank, amounting in the aggregate to $6,024.00, have been filed with John C. Ferrell, assignee, and Miller Ketcham, receiver, by claimants whose names are unknown, and as no evidence has been submitted to me in reference to the ownership of said notes, I report against the payment of the same.

2. In compliance with that portion of the said decretal order, made by this honorable court in this cause on May 22, 1873, requiring me to report whether any one or more of the several claimants who have set up claims against said Bank of Commerce, or any person or party for them, and if so, who, since July 31, 1866, by suit or otherwise, have pressed said claims or any portion thereof for payment against said bank, its officers, assignee, stockholders, or debtors, and if suit has been brought thereon, to what result the same has been carried, I find and report as follows in reference to each one of the following claims:

SOUTHERN EXPRESS CO.
vs.
THE BANK OF COMMERCE.

49 Suit was instituted by said company against said bank in the superior court of Chatham County, Georgia, on the 31st of December, 1869, where no further action was taken by plaintiff than the filing of its petition. Subsequently, an March 19, 1873, said Southern Express Co. filed an application in this honorable court to be permitted to participate in the distribution of the assets of said bank. Having counted the notes filed by said company in support of its claim, I report in favor of the payment pro rata to the same, no objections having been made, of the sum of $3,112.00, said claimant not being, however, entitled to any priority over other billholders by reason of the institution of said suit.

MILES G. DOBBINS
vs.
BANK OF COMMERCE.

Plaintiff instituted suit in superior court of Chatham County on December 31, 1869, and no further action taken by him. On March 19, 1872, an application was filed in this honorable court by him to be permitted to participate in the distribution of assets of said bank. I have counted the notes filed by him in support of his claim, no objections having been made, and report in favor of paying him pro rata the sum of $4,006.00, he being entitled to no priority over other billholders.

50 ANDREW J. ANDERSON
vs.
BANK OF COMMERCE.

Suit was instituted by plaintiff against said bank on Dec. 31, 1869, in superior court of Chatham C'y. No further action was taken by him there. On March 19, 1872, he filed his application in this honorable court to be permitted to participate in the distribution of the assets of said bank. Having counted the bills filed by him in support of his claim, and no objections being made to same, I report in favor of the pro-rata payment to him of the sum of $318.00, he being entitled to no priority over other billholders.

W'M AND R. J. LOWRY
vs.
BANK OF COMMERCE.

Plaintiffs instituted suit in superior court of Chatham C'y on December 31, 1869. On March 19, 1872, they filed their application in this honorable court to be permitted to share in the distribution of the assets of said bank. Having counted the notes filed by them in support of their claim, and no objections having been made to same, I report in favor of the pro-rata payment to claimants of the sum of $5,750.00 as preferred creditors, but entitled to no priority over other billholders.

DANIEL MILLER
vs.
BANK OF COMMERCE.

51 Claimants instituted suit in superior court of Chatham C'y on Dec. 30, 1869. No further action has been taken by him there. His application was filed in this honorable court to be permitted to participate in distribution of the assets of said bank on the 19th March, 1872. I have counted the notes filed by him in support of his claim, and no objections having been made to same, I report in favor of the pro-rata payment to claimant of the sum of $1,795.00 as a preferred creditor, but entitled to no priority over other billholders.

ESTATE OF WILLIAM DOUGHERTY
vs.
THE BANK OF COMMERCE.

Suit was instituted by William Dougherty, deceased, in the superior court of Chatham County on December 31, 1869. No further action

was there taken by said claimant. On Oct. 30, 1873, an application was filed with me by the attorney of said estate to allow it to share in the assets of said bank. Having counted the notes filed in support of said claim, and no objections having been made to the same, I report in favor of the pro-rata payment to said estate of the sum of $2,768.00, entitled to the same preference as other billholders.

GEO. W. SCOTT
vs.
BANK OF COMMERCE.

Plaintiff instituted suit in superior court of Chatham County on December 31, 1869. No further proceedings were had in said suit. On March 25, 1872, claimant filed his application in this honorable court to be permitted to participate in the distribution of the assets of said
52 bank. I have counted the notes filed by him in support of his claim, and no objections having been made, I report in favor of paying him pro rata the sum of $14,164.00 as a preferred creditor, but entitled to no priority over other billholders.

JOHN V. TERRY
vs.
THE BANK OF COMMERCE.

This claimant filed his application on the 23rd March, 1872, to be permitted to participate in the distribution of the assets of said bank. On July 8, 1872, $62,219.00 of the notes filed by him in support of his said claim were duly protested for non-payment, on which claimant claims interest from date of protest. Having counted the entire amount of notes owned by said claimant, and filed by him, I report in favor of paying him pro rata the sum of $64,504.00, but without interest, he being entitled to no preference over other billholders by reason of the protest of said notes for non-payment.

HARVEY TERRY, COMPL'T,
vs.
THE BANK OF COMMERCE, & J. C. FERRILL, assignee, def'ts. } In equity.

Suit was instituted by said claimant in this honorable court against the Bank of Commerce, and John C. Ferrill, assignee, on the 12th of July, 1869, and a final decree rendered in his favor on December 15, 1870, for the sum of $23,297, with interest thereon from the date of said decree, and $80.92 ct's costs. This court had previously appointed
53 Andrew Sloan a commissioner to ascertain the amount of money due the complainant, by counting the bills filed by the same, who reported on April 20, 1870, that said bank was indebted to said complainant in the sum of $23.297 on said bills. I therefore report in favor of the payment pro rata of said sum of $23,297 to said claimant, no objections having been made to said claim. The fact of said claimant having instituted suit and recovered judgment against said bank after the date of the assignment of the assets of said bank on July 31, 1866, does not entitle him to any priority over other billholders who have filed their claims and ask to share in the distribution of said assets. I therefore report against allowing said claimant the interest on said sum of $23,297, and $80.92 c'ts costs, as allowed him by said decree of this court of 15th December, 1870.

The said claimant has also presented to me another claim against said bank for the sum of $25, which said claimant, in compliance with an order of this court paid to Andrew Sloan, commissioner, for counting said notes filed by said claimant. I report in favor of the payment of said claim, subject to the preference accorded by law to billholders.

TIMOTHY BAKER
vs.
BANK OF COMMERCE & JOHN C. FERRILL, assignee.

This claimant instituted suit in this court on the 31st Decem-
54 ber, 1869, against said bank, and a final judgment was rendered in his favor on November 16, 1871, against the same for the sum of $2,598.00, with interest on same from December 31, 1869, and costs of court amounting to $51.31 c'ts. Having counted the notes filed by claimant in this court, upon which said judgment was based, and no objection having been made to the same, I report in favor of the pro-rata payment to him of the sum of $2,598.00, but against allowing him the said interest and costs for the reasons assigned in the above claim of Harvey Terry vs. The Bank of Commerce.

HUGH MCCREA & CO.
vs.
THE BANK OF COMMERCE & JOHN C. FERRILL, assignee.

Suit was instituted by claimants in this court on October 16, 1868, and a final judgment rendered in their favor on December 5, 1871, against said bank for the sum of $2,737.00, with interest on same from October 16, 1868, with costs of court, amounting to $66.00. I have counted the notes filed by claimants in this court, upon which said judgment was based, and no objection having been made to said claim, I report in favor of allowing claimants the pro-rata sum of $2,737.00. For the reasons assigned in the above claim of Harvey Terry, I report against allowing claimants said interest and costs.

JOHN YOUNG
vs.
THE BANK OF COMMERCE & JOHN C. FERRILL, assignee.

55 This claimant instituted suit in this court on December 31, 1869, against said bank, and a final judgment rendered in his favor on Nov. 15, 1871, for the sum of $8,628.00, with interest on same from December 31, 1869, and $61.31 costs. Having counted the notes filed by claimant in this court upon which said decree was based, and no objections having been made to said claim, I report in favor of the payment pro rata to claimant of said sum of $8,628.00; but for the reasons assigned in the above claim of Harvey Terry vs. The Bank of Commerce, I am opposed to allowing him said interest and costs. I find that this claimant also filed his application in this court on March 19, 1872, to be allowed to participate in the distribution of the assets of said bank.

GEORGE W. HATCH
vs.
THE BANK OF COMMERCE & JOHN C. FERRILL, assignee.

I find and report this claimant has instituted three several suits against said bank in this court since July 31, 1866.

The first of said suits was instituted by him against said bank on February 27, 1867, and a final judgment rendered in his favor on November 4, 1868, for $25,000, with interest from May 24, 1867; $6,250 damages for non-payment, and $213.90 c'ts costs of suit.

The second of said suits was brought by claimant against said bank on March 13, 1867, and final judgment rendered in his favor on November 26, 1867, for $25,000, with $1,331 interest; $2,500 damages for non-payment, and $48.50 c'ts costs of suit.

56 The third of said suits was brought by said claimant against said bank, on March 15, 1867, and a final judgment entered in his favor on November 26, 1867, for $50,000 principal, with interest from January 8 to November 25, 1867, amounting to $3,081.94 cts.; also $5,000 damages for non-payment, and $60 costs of suit.

I have counted all the notes of said bank that have been handed to me in support of the claim of said George W. Hatch, by his counsel, A. W. Stone, and report in favor of the payment or the same pro rata of the sum of $75,000.

After diligent search, the said A. W. Stone has been unable to find a package of notes alleged by him to contain $25,000 in notes of said bank, upon which the first of the aforesaid decrees was rendered in favor of the said Hatch, on November 4, 1868. I therefore cannot report in favor of the payment of said $25,000 of notes.

I find that on March 25, 1872, said Geo. W. Hatch filed his application in this court, to be permitted to share in the distribution of the assets of said bank.

I also find and report that the said Geo. W. Hatch has, at various times, pressed his said claims as a billholder by instituting various suits in this court against the stockholders of said bank, whose names appear in the following schedule:

57 SCHEDULE C.

Suit; when instituted.	
Geo. W. Hatch vs. J. L. Villalonga	December 19, 1869.
Same vs. Joseph Lippmann	March 5, 1869.
Same vs. G. B. Lamar	March 5, 1869.
Same vs. C. L. Gilbert	March 5, 1869.
Same vs. John C. Ferrill	March 5, 1869.
Same vs. John C. Ferrill, administrator	March 13, 1869.
Same vs. John J. Kelly	March 16, 1869.
Same vs. J. W. Lathrop & Harvey Lathrop	March 12, 1869.
Same vs. John Stoddard	March 5, 1869.
Same vs. Ann M. Hardee, administratrix	March 13, 1869.
Same vs. John Cooper	March 5, 1869.
Same vs. William Battersby	March 13, 1869.
Same vs. Geo. C. Freeman	December 15, 1869.
Same vs. Andrew Low	March 5, 1869.
Same vs. A. L. Hartridge	March 13, 1869.
Same vs. W. M. Davidson	December 17, 1869.
Same vs. Levi Lillienthal	December 15, 1869.
Same vs. Emily H. Tubman	December 15, 1869.
Same vs. Johanna Cass, executrix	December 23, 1859.
Same vs. Benjamin Grovenstein	December 31, 1869.

By an investigation of the records of this court, I find that no judgment has been obtained by said Geo. W. Hatch in any of the suits in-

stituted by him as aforesaid against any of the said defendants, sued by him as stockholders, whose names appear in said Schedule C.

58 Suit was also instituted in this court by said Geo. W. Hatch against Charles Green, as stockholder of said bank, on March 5, 1869. A final judgment was entered in favor of said plaintiff in November 14, 1872, and said judgment was satisfied by the payment of the sum of $10,000 to plaintiff's attorney, by said Charles Green.

Suit was also instituted in this court by said Hatch against Henry R. Jackson, as stockholder of said bank, on March 5, 1869. On May 20, 1873, said suit was dismissed by plaintiff's attorney.

Suit was also instituted in this court on March 8, 1869, against John Stevenson, as stockholder of said bank, and a verdict rendered in favor of plaintiff on 19, 1871.

As all the above-mentioned suits were instituted by said claimant, and as said decrees were rendered by this court in his favor, at a period subsequent to the assignment of the assets of said bank, on July 31, 1866, I can but repeat the opinion already expressed by me in reporting upon other and similar claims, that said claimant is not entitled, by the instituting of said suits and the obtaining of said judgments, to any priority over other billholders in the distribution of the fund sought to be distributed. I therefore report against the payment to him of the interest, damages, and costs of suit, as allowed him by said decrees of this court.

3. In further compliance with that portion of said decretal order made by this honorable court in this cause, on May 22, 1873, requiring me, as special master, to report whether any portion of any or all of

59 said several claims has been paid; if so, how much, by whom, and when, and if by the Bank of Commerce, its assignee, stockholders, or debtors, or any of them; how much, by whom and when; and, if by the Bank of Commerce, its assignee, stockholders or debtors, or any of them, how he or they paid the same, and upon what conditions, if any, I have proceeded to investigate the questions so referred to me, and report that the only evidence that has been submitted to me, that any portion of any or all of said several claims have been paid, is the satisfaction of the aforesaid judgment of Geo. W. Hatch against Charles Green, by the payment by said Green of the said sum of $10,000. I also find a receipt endorsed, upon a fieri facias issued in pursuance of the aforesaid decree of this court in favor of Geo. W. Hatch vs. The Bank of Commerce, which was rendered on the 25th November, 1867, for the sum of $50,000, together with interest, damages, and costs of suit as aforesaid, which said receipt is signed by William Dougherty, by A. W. Stone, attorney for said Hatch, is dated January 21, 1869, and purports to show that the sum of $2,688.68 cts. was paid said A. W. Stone on account of said Geo. W. Hatch, by W. G. Dickson, United States marshal.

All of which is respectfully submitted.

W. GRAYSON MANN,
Special Master, etc.

SAVANNAH, *November* 15, 1873.

60 (Endorsement to special master's report:) In the 5th circuit court of the United States for the southern district of Ga., Harvey Terry et al., complainants, vs. The Bank of Commerce & John C. Ferrill et al., defendants. In equity. Report of W. Grayson Mann, special master, etc. Filed Nov. 15, 1873. Ja's McPherson, clerk.

Exceptions to master's report by G. W. Hatch et al.

George W. Hatch and others, parties to said cause, by their solicitors, A. W. Stone and Amos T. Akerman, on hearing the report of W. Grayson Mann, special master in said cause, except thereto, as follows:

1. Because he reports payment to particular persons a specified and definite sum of money, in some instances equal to the full amount of claimant's demand, without saying pro rata on their said claims.

2. Because the said master reports in favor of individuals who are not parties to said bills, and who have not taken any steps to be made parties to said bill, or even manifested a desire to be made parties to the same.

3. Because said master does not report in favor of George W. Hatch, payment pro rata of a judgment obtained by him in this court, for the sum of twenty-five thousand dollars, principal debt, and interest
61 thereon, from the twenty-fourth day of July, 1867, and cost, two hundred and thirteen dollars and ninety cents, and damages, six thousand two hundred and fifty dollars, said judgment being obtained as the result of a suit against said bank, upon the note of said bank, the evidence of which was duly presented to said master.

4. Because said report is uncertain and indefinite.

5. Because he does not report in favor of payment pro rata of interest and damages upon the judgments in favor of said Hatch.

A. W. STONE, &
A. T. AKERMAN,
Solicitors for Geo. W. Hatch et al.

(Endorsement:) U. S. cir. court, so. dist. of Ga. In equity. Harvey Terry, compl't, vs. Bank of Commerce & John C. Ferrill et al., defendants. Exceptions to master's report. Filed Dec'r 8, 1873. Ja's McPherson, clerk; Stone & Akerman.

Exceptions to master's report by Harvey Terry.

Exceptions taken by the said Harvey Terry, complainant in the bill named to the report of W. Grayson Mann, special master, to whom the said cause stands referred, made in pursuance of the order of May 22d, 1873.

1st EXCEPTION.—For that said master, by his said report, certified that said Harvey Terry should be paid the sum of twenty-five dollars paid by him to Andrew Sloan, commissioner, for counting notes, filed
62 by said Terry in this cause, "subject to the preference accorded by law to billholders," whereas said master should have certified that said twenty-five dollars should be paid to Terry out of the fund in court, prior to any distribution thereof, as cost in the cause.

2ND EXCEPTION. For that said master, by his said report, certified that Geo. W. Hatch, claimant, who filed his application to be made a party to this cause, and to share in the distribution of the fund in court on the 25th of March, 1872, was entitled to payment on his claim, to wit, pro rata with other claimants, billholders; whereas said master should have certified that said Geo. W. Hatch was not entitled to receive anything in the cause, 1. Because it appears from said report that said Geo. W. Hatch has not accepted, as have the other claimants in this cause, the assignment of said Bank of Commerce of July 1st, 1866, but has rejected the same; and since said assignment has instituted various suits against said bank, and pressed the same to judgment and

execution, and thereupon has instituted numerous suits against persons holding stock in said Bank of Commerce, with the view to compel payment of his said claim by them, and has compelled some of said stockholders, to wit, Charles Green, to pay upon his said claim the sum of ten thousand dollars upon a judgment recovered against him, and because it also appears that said Geo. W. Hatch has collected and received on account of his said judgment an execution against the
63 Bank of Commerce, the sum of 2,688.68. But if said Geo. W. Hatch is entitled to receive anything of the fund in court, he should only receive the same pro rata with other like claimants, billholders, after the said other claimants have received the same amount, pro rata, on their claims, as recorded and received by said Geo. W. Hatch upon his several judgments and executions aforesaid.

D. T. CORBIN,
Sol'r for Harvey Terry.

(Endorsement:) U. S. cir. court, so. dist. of Georgia. In equity. Harvey Terry, compl't, vs. The Bank of Commerce, John C. Ferrill, ass'ee, et al., defendants. Exceptions to master's report by Harvey Terry. Filed Dec'r 9, 1873. Ja's McPherson, clerk. D. T. Corbin, sol. for Terry.

Exceptions to master's report by various parties.

The undersigned, solicitors in said cause for parties to said cause, and parties interested in the distribution of the assets of said Bank of Commerce, except to the report of W. Grayson Mann, esq., special master in said case, filed on the 15th day of November, 1873, on the following grounds:

1st. That the master improperly reports in favor of paying pro rata the billholders named in Schedule A and B of said report, none of said claims having been sued prior to the first day of January, 1870, and therefore being barred by the statute of limitations of the general
64 assembly of the State of Georgia, passed on the 16th day of March, 1869.

2d. That the master improperly reported in favor of paying pro rata the claim of John V. Terry, the said claim not having been sued prior to the first day of January, 1870, and therefore barred by the statute of limitations of the State of Georgia, passed on the 16th day of March, 1869.

AMOS T. AKERMAN,
A. W. STONE,
Solicitors for Southern Express Co.,
Miles G. Dobbins, A. T. Anderson, W'm M. and R. J. Lowery, Estate Daniel Miller, Estate of W'm Dougherty, Geo. W. Scott, Timothy Baker, Hugh McRea & Co., John Young, Geo. W. Hatch, and others.

(Endorsement:) Harvey Terry et al. vs. Bank of Co nmerce et al. Exceptions to master's reports. Filed Dec'r 13th, 1873. Ja's McPherson, clerk. Stone, Akerman, sol'rs for claim'ts.

Exceptions to master's report by G. W. Hatch et al.

And for additional exceptions, the said objecting parties say that the master's report allowing the claim of G. B. Lamar, on bills filed by
65 him should not be affirmed, because, since the filing of the same, the

said bills, to the amount of ninety-one thousand dollars, have been pleaded by said Lamar and allowed by a jury of this court, as redeemed by him, in discharge of his liability as a stockholder in the Bank of Commerce, in a suit in this court in favor of George W. Hatch, against him, tried on the fifteenth day of December, 1873.

AMOS T. AKERMAN &
A. W. STONE,
Att'ys for Geo. W. Hatch et al.

(Endorsement:) U. S. court, so. dist. of G'a. Harvey Terry vs. Bank of Commerce et al. Exceptions to master's report. Filed Dec'r 15, 1873. Ja's McPherson, clerk. Stone, Akerman.

66 UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the fifth circuit court of the United States of America for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said district, on the twenty-second day of December, in the year of our Lord one thousand eight hundred and seventy-three—

Present, the honorable John Erskine, U. S. judge for the district of Georgia.

HARVEY TERRY, COMPL'T,
vs.
BANK OF COMMERCE ET AL., DEF'TS. } In equity.

Order for receiver to sell real estate.

It appearing necessary that the assets in the hands of the receiver in said case should be available for distribution by the next term of this court—

It is ordered, on motion of complainant, that Miller Ketchum, the receiver, do sell at public outcry, for cash, to the highest bidder, after notice by advertisement in the Savannah Morning News once a week for eight weeks preceding said sale, the real estate that has come into his hands as receiver.

That the money realized from such sale shall immediately be paid into the registry of this court by the receiver, who shall make full report of said funds and of all other funds that may have come to his hands as receiver, and of his actings and doings in the premises,
67 on the first day of the next term. Be it so.

Dec. 22, 1873.

JOHN ERSKINE,
U. S. Judge.

(Endorsement:) U. S. cir. court, so. dist. of Georgia. In equity. Harvey Terry vs. Bank of Commerce et al. Order directing receiver to sell real estate of bank, marshal assets, and report on first day of next term of court preparatory to distribution. Filed Dec'r 22, 1873. Ja's McPherson, clerk. Stone, Akerman.

Return of marshal, No. 1.

After due and diligent search, I find that the within-named Miller Ketchum is not to be found in this district.

Jan'y 31, 1874.

The return of—

W. H. SMYTH, *U. S. Marshal,*
By A. B. SMITH, *Deputy.*

Return of marshal, No. 2.

I have, this 3d day of February, 1874, served a copy of the within order upon Messrs. Hartridge & Chisholm, attorneys for Miller Ketchum, receiver, by handing the same to U. S. Chisholm, of the firm of Hartridge & Co., personally, at Savannah, G'a, at 4 o'clock p. m.

The return of—

W'M H. SMYTH, *U. S. Marshal,*
Per C. P. FREEMAN, *Deputy.*

68 *Rulings of court upon exceptions to master's report.*

1. The exceptions filed by Geo. W. Hatch, on Dec. 8, 1873, are all overruled, except the 3d, which is sustained; the court being opinion that the judg't, secured by Hatch against the bank for $25,000, based on the bills of the bank, should have been allowed by the master.

2. The exceptions filed on Dec. 9, 1873, by Harvey Terry to the master's report, two in number, are overruled.

(Endorsement:) U. S. cir. court so. dist. of Georgia. In equity. Harvey Terry et a., compl'ts, vs. The Bank of Commerce et al. Rulings of the court upon exceptions to the report of W. G. Mann, master. Filed May 13th, 1874. Ja's McPherson, clerk. Woods, judge.

Special master's supplemental report.

To the honorable the judges of said court:

In pursuance of two orders made and entered in this cause since the filing of my original report in this cause, on the 15th November, 1873, which two orders respectively bear the date of the 16th December, 1873, and of the 15th of April, 1874, whereby it appearing to the court
69 that by the admission of G. B. Lamar, the sum of thirteen thousand ($13,000) *dollars* of the bills of said bank, which have been filed as a claim and reported by the special master in chancery as a part of the bills held by G. B. Lamar, are really the property of Emily H. Tubman, and should have been filed in her name, "it was ordered that the report of the master be amended, and that said sum of bills be deducted from the name of G. B. Lamar and placed in the name of said Emily H. Tubman, as a creditor of said bank,"

I, W. Grayson Mann, special master in said cause, after an investigation of the matters so referred to me, find and report as follows: That evidence having been submitted to me in the form of letters, in the handwriting of said G. B. Lamar, admitting that $13,000 of the $118,920 of bills of said bank, originally filed with me, and reported upon as the bills of said Lamar were in reality the individual property of said Mrs. Tubman, my original report in said cause should be so far amended as to reduce the pro rata claim of said Lamar, allowed in said report, from $118,920 to $105,920, and to allow Mrs. Emily H. Tubman the sum of $13,000, to be paid her pro rata out of the assets of said bank.

HUGH W. MERCER
vs.
THE BANK OF COMMERCE, ETC.

In pursuance of an order made and entered in this cause since
70 the filing of my original report, which order is dated on the 20th

December, 1873, the petition of Hugh W. Mercer, esq., praying to be allowed to share pro rata in the distribution of the funds and property of said bank, was referred to me to count the bills of said petitioner filed with me by his solicitor, Geo. A. Mercer, esq., and to report upon the same at the present term of this court, under the terms of the order of reference to me previously granted in said cause, and dated the 22d May, 1873:

I accordingly find and report that having counted the said bills of said bank, belonging to said Hugh W. Mercer, he is entitled as a bill-holder to receive pro rata the sum of $6,866 out of the assets of said bank.

JOHN L. HARDEE
vs.
THE BANK OF COMMERCE.

In pursuance of two several orders made and entered in this cause, on the 22d December, 1873, and on the 13th April, 1874, whereby the petition of John L. Hardee was referred to me, with leave for him to present to me his bills of said bank, to be counted and reported upon by me for the purpose of sharing in the distribution of said fund,

I beg respectfully to report that I have counted the bills of said bank belonging to said John L. Hardee, filed with me by his solicitors, Messrs. Lawton, Jackson & Basinger, and find that said Hardee is en-
71 titled to be paid the sum of $9,985 pro rata out of the assets of said bank.

JAMES COPE & VALENTINE KLEIN
vs.
THE BANK OF COMMERCE.

In pursuance of an order made and entered in said cause, on the 28th December, 1873, whereby the petitions of James Cope and Valentine Klein, asking to be made parties to said cause, with proper and suitable averments, and asking to be permitted to share in the distribution of the assets of said bank, was referred to me for action and report, I have proceeded to count the bills of said bank filed with me by their solicitor, Thomas M. Norwood, esq., and find and report that said James Cope is entitled as billholder to receive out of the assets of said bank pro rata the sum of $144, and that Valentine Klein is entitled pro rata to the sum of $63 out of said assets.

LEVI LILLIENTHAL
vs.
THE BANK OF COMMERCE.

In pursuance of an order of this court, made and entered in this cause, on the 13th April, 1874, whereby the petitioner, Levi Lillienthal, asking to be admitted a party complainant to said cause, in order to share in the distribution of the assets of said bank pro rata with other
72 creditors, was referred to me with authority to take cognizance of the bills of said petitioner and report upon the same without prejudice to any person, I have proceeded to count the bills of said bank belonging to said Lillienthal, filed with me by his solicitor, J. R. Saussy, esq'r, and find and report that said Lillienthal is entitled to receive the sum of $4,974 pro rata out of the assets of said bank.

ANDREW LOW & CHARLES GREEN
vs.
THE BANK OF COMMERCE.

In pursuance of an order made and entered in this on the 13th April, 1874, whereby the petition of Andrew Low and Charles Green, seeking to be made parties to said cause, in order to share in the distribution of said assets, was referred to me to count the bills of said petitioners and to report upon the same, I have proceeded to investigate said claims, and, after counting the bills of said petitioners filed with me by their solicitors, Messrs. Lovell & Falligant, I find and report that said Andrew Low is the owner and holder of $20,134 of the bills of said bank, and is therefore entitled to be paid that sum pro rata out of the assets of said bank, and that said Charles Green is the owner and holder of $11,400 of the bills of said bank, and is therefore entitled to be paid that amount pro rata out of said assets.

73 WILLIAM DUNCAN
vs.
THE BANK OF COMMERCE.

By virtue of an order made and entered in said cause, on the 13th April, 1874, the petition of William Duncan, claiming a right to share in the distribution of the assets of said bank, was referred to me, said order being as follows:

Upon reading the petition of William Duncan, it is ordered that W. Grayson Mann, special master in said cause, do count and report the loose bills of said defendant in his possession, and that he further report whether the sum of $4,317 of said loose bills were deposited with said assignee of said defendant, as stated in said William Duncan's petition, and are in possession of him, the said master, and to report upon the right of said Duncan to distribution under the former orders and report made in said cause.

(Signed) JOHN ERSKINE, *Judge.*

April 13, 1873. In open court.

I have proceeded to investigate the matter so referred to me, and after an examination of said William Duncan under oath, as well as after a careful examination of the books of said bank, I find and report as follows:

On page of my original report in this cause I stated: "A number of bills of said bank, amounting in the aggregate to $6,024, have
74 been filed with J. C. Ferrill, and Miller Ketchum, receiver, but no evidence having been produced before me as to the ownership of said bills, I report against the payment of the same."

From a statement recently made to me by Miller Ketchum, receiver of said bank, I find that shortly after his appointment as receiver by this court, on the 18th of January, 1870, he received from John C. Ferrill, assignee of said bank, a tin box containing a large number of bills filed with said assignee by various billholders seeking to share in the distribution of the assets of said bank. This tin box was handed to me by said receiver shortly after my appointment as special master in said cause, and I proceeded to count and report upon all the bills found in said box whose owners could be identified and whose names appear in my original report. Among the bills found in that box I also find the

said $6,024 in loose bills not identified, and with no names of owners attached.

The petitioner, William Duncan, has testified before me that on the 20th of January, 1867, he handed to J. C. Ferrill, assignee, the sum of $4,317 in bills of said bank, in order that said petitioner might share in the distribution of the assets of said bank; that said assignee then and there counted said bills and gave said William Duncan a receipt for same, which receipt, now in the possession of said Duncan, I have
75 examined and find to be in the handwriting of said assignee and signed by him, and of which the following is a true copy:

"$4,317. Bank of Commerce. Deposited with me,
"JOHN C. FERRILL, *Assignee.*

"30, JANUARY, 1867".

I am satisfied, from the books of said bank, and from the testimony of said Duncan, explanatory of said receipt, that said Duncan received no payment upon or for said bills, and that when they were turned over to said receiver by said John C. Ferrill, assignee, shortly before the death of the latter, they were not marked or identified as the bills of said Duncan; and that said loose bills, notwithstanding diligent investigation on my part, have never been claimed by any other parties.

I therefore find and report that I have counted $4,317 of said loose bills as the property of said William Duncan, and that he, as a bill-holder, is entitled to share to that amount pro rata in the assets of said bank.

ELIAS BROWN
vs.
BANK OF COMMERCE.

In pursuance of an order made and entered in this cause, on the 18th December, 1873, the petition of Elias Brown, asking to share in the distribution of the fund in the above cause, was referred to me to count the bills of petitioner and report upon the same under the terms of the order of reference previously granted in said cause. Having
76 counted the bills of said petitioner filed with me by his solicitor, Ch. N. West, esq., in support of said claim, I find and report that he is entitled as a bill-holder to share pro rata in the assets of said bank to the amount of $1,864.

BRANCH, SONS & CO.
vs.
THE BANK OF COMMERCE.

In pursuance of an order made and entered in this cause, on the 21st April, 1874, by which I am directed to take cognizance of the bills of said bank belonging to Branch, Sons & Co., and report upon the same, I find and report, after counting said bills, that Branch, Sons & Co., are entitled to be paid on the same the sum of $263 out of the assets of said bank.

NICHOLAS WOLF
vs.
BANK OF COMMERCE.

In pursuance of an order made and entered in said cause, on the 21st

April, 1874, whereby I was authorized to count and report as to the rights of Nicholas Wolf, holder and owner of certain bills of said bank, as under the first order of reference to me made in said cause, I find and report, after counting the bills of said Wolf, filed with me by his solicitor, Ch. N. West, esq., that he is entitled to *be* the sum of $530 pro rata out of the assets of said bank.

77 CHARLES F. MILLS
vs.
THE BANK OF COMMERCE.

Ch. F. Mills has presented to me, on the 20 April, 1874, certain bills of which he is the owner and holder, with the request that I would report upon the same, without any special order of reference to me authorizing me to report upon the same. All that I feel authorized to say in reference to said claim is, that I have counted the bills of said Ch. F. Mills, and find that before distribution he is entitled, as a bill-holder, to present his claim for the sum of $139, to be paid out of the assets of said bank.

All of which is respectfully submitted.

W. GRAYSON MANN,
Special Master in Chancery.

MAY 13, 1874.

(Endorsement:) 5th United States circuit court, southern district of Georgia. In equity. Harvey Terry, compl't, vs. The Bank of Commerce, & John C. Ferrill, assignee, def'ts. Supplemental report of W. Grayson, special master. Filed May 13th, 1874. Ja's McPherson, clerk.

78 UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the fifth circuit court of the United States of America, for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said district, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and seventy-four—

Present, the honorable John Erskine, U. S. judge for the district of Georgia.

HARVEY TERRY, COMPL'T,
vs.
BANK OF COMMERCE, ET AL., DEFT'S. } In equity.

Final order confirming master's report, etc.

Upon hearing the report of W. Grayson Mann, special master in the above-entitled cause, and upon due consideration thereof, it is ordered, adjudged, and decreed—

That said report, as modified by the rulings of this court on the 13th day of May, A. D. 1874, upon the several exceptions filed thereto, be confirmed and stand as the judgment of the court, and that the register, after paying the taxed costs in the cause, do pay out to the several claimants in said report mentioned the fund in the registry of the court in accordance therewith. Be it so.

JOHN ERSKINE,
U. S. Judge.

In open court, May 18, 1874.

(Endorsement:) United States of America, southern district of G'a, 5th circuit. In equity. Harvey Terry vs. The Bank of Commerce and John C. Ferrill, assignee. Final order confirming report and distributing fund. Filed May 18, 1874. Ja's McPherson, clerk. Corbin.

79 RECEIVER'S REPORT

Miller Ketcham, receiver Bank of Commerce, in account with U. S. circuit court.

1870. DR.

Mc'h.	10.	To cash from	John O. Ferrill	$1,895 93		
	16.	" " "	sale furniture	207 48		
Sept.	28.	" " "	John O. Ferrill	153 05		
Oct.	21.	" " "	sale of counter	107 71		
1872.						
Feb'y	19.	" " "	sale of safe	5 00		
1873.						
May	27.	" " "	John O. Ferrill	177 97		
		" " "	water rent	25 50		
		" " "	interest account	875 89		
		" " "	buildings, rent to Feb'y 1st	14,286 06		
						$17,734 59

CR.

1871.						
June	3.	By cash paid	Hartridge & Chisholm	250 00		
1873.						
May	26.	" " "	John O. Ferrill, order court	500 00		
June	6.	" " "	T. E. Lloyd " "	500 00		
Oct.	15.	" " "	Hartridge & C., suit est. Ferrill	500 00		
		" " "	advertising and water rent	277 95		
		" " "	paid insurance	907 90		
		" " "	repairs buildings	1,333 16		
		" " "	State, county, and city taxes	2,764 14		
Aug.	1.	" " "	U. S. court	9,099 26		
						16,132 41
1874.						
Apr.	14.	Balance on hand				$1,602 18

SAVANNAH, *April 14th*, 1874.

80 ADVERTISING & WATER RENT.

1870.					
Oct.	24.	To cash paid	for water rent	46 50	
	24.	" " "	advertising rooms to rent	14 00	
Nov.	22.	" " "	" " "	16 75	
1871.					
Feb'y	2.	" " "	water rent	46 50	
1872.					
Feb'y	15.	" " "	" "	46 50	
Apr.	13.	" " "	advertising N. Y. Tribune	78 00	
		" " "	Macon Union	21 70	
1873.					
Aug.	14.	" " "	Atlanta Constitution	8 00	
					$277 95

INSURANCE ACCOUNT.

1870.					
Apr.	26.	To cash paid	premium	50 00	
May	9.	" " "	"	62 50	
July	15.	" " "	"	125 00	
1871.					
Feb'y	9.	" " "	"	50 00	
June	3.	" " "	"	75 00	

1872.							
Feb'y	15.	"	"	"	"	.....	50 00
	"	"	"	"	"	.....	68 75
Aug.	19.	"	"	"	"	.....	50 00
	"	"	"	"	"	.....	43 75
1873.							
Jan'y	29.	"	"	"	"	.....	70 00
May	8.	"	"	"	"	.....	70 00
Aug.	14.	"	"	"	"	.....	87 50
	5.	"	"	"	"	.....	35 00
1874.							
Jan'y	12.	"	"	"	"	.....	40 00
Feb'y	4.	"	"	"	"	.....	30 40
							$907 90

STATE, COUNTY, & CITY TAXES.

1870.							
Mc'h	12.	To cash	paid	State & county	taxes	.....	299 03
	17.	"	"	city	"	.....	273 00
July	2.	"	"	"	"	.....	187 50
Nov.	18.	"	"	State	"	.....	157 73
Dec.	14.	"	"	city	"	.....	93 75
1871.							
Mc'h	17.	"	"	"	"	.....	93 75
Oct.	17.	"	"	"	"	.....	395 00
1872.							
Feb'y	15.	"	"	State		.....	157 73
Aug.	19.	"	"	city		.....	206 25
Nov.	13.	"	"	"		.....	206 25
Sep.	25.	"	"	State		.....	51 95
1873.						.....	
May	13.	"	"	city		.....	103 13
Aug.	17.	"	"	"		.....	103 13
Oct.	15.	"	"	"		.....	103 12
1874.						.....	
Feb'y.	13.	"	"	"		.....	103 12
Apr.	9.	"	"	State		.....	249 70
							$2,764 14

81 REPAIRS OF BUILDINGS.

1870						
June	3.	To cash	paid	repairs office Walker & Allen	.....	23 50
Nov.	7.	"	"	plastering & kalsomining bank	.....	50 00
	"	"	"	repairing roof	.....	17 50
	23.	"	"	new roof on bank building	.....	250 00
1871.						
Jan'y	5.	"	"	Murphy & Clark, for painting	.....	200 00
	7.	"	"	repairs, as per vouchers	.....	87 30
	20.	"	"	Douglas, for grates &c	.....	63 00
Feb'y	2.	"	"	repairs to safe	.....	30 00
	9.	"	"	Murphy & Clark, for painting	.....	118 20
	17.	"	"	" " " "	.....	40 00
	"	"	"	Dooley, for repairs	.....	7 50
	"	"	"	Roberts, painting roof	.....	14 00
	"	"	"	boy, cleaning yard	.....	6 00
Mc'h	7.	"	"	Murphy & Clark, a sper bill	.....	45 00
	7.	"	"	Douglass, " "	.....	6 00
Apr.	17.	"	"	repairs office Stone	.....	23 00
Nov.	8.	"	"	Grimball & Co., repairs to cellar	.....	8 00
	"	"	"	Henry Giles, for grates	.....	7 50
1872.						
Feb'y	15.	"	"	repairs rooms M. B. Millen	.....	20 00
	"	"	"	Halligan, for plumbing	.....	95 54
Apr.	13.	"	"	repairs office Walker & A	.....	5 75
Nov.	6.	"	"	Murphy & Clark, painting	.....	54 90
Sept.	10.	"	"	Halligan, for plumbing	.....	10 00
Dec.	18.	"	"	" " "	.....	5 00

(Endorsement:) United States of America, southern district of G'a, 5th circuit. In equity. Harvey Terry vs. The Bank of Commerce and John C. Ferrill, assignee. Final order confirming report and distributing fund. Filed May 18, 1874. Ja's McPherson, clerk. Corbin.

79 RECEIVER'S REPORT

Miller Ketcham, receiver Bank of Commerce, in account with U. S. circuit court.

1870. DR.

Mc'h.	10.	To cash from	John O. Ferrill	$1,895 93	
	16.	" " "	sale furniture	207 48	
Sept.	28.	" " "	John O. Ferrill	153 05	
Oct.	21.	" " "	sale of counter	107 71	
1872.					
Feb'y	19.	" " "	sale of safe	5 00	
1873.					
May	27.	" " "	John O. Ferrill	177 97	
		" " "	water rent	25 50	
		" " "	interest account	875 89	
		" " "	buildings, rent to Feb'y 1st	14,286 06	
					$17,734 59

CR.

1871.					
June	3.	By cash paid	Hartridge & Chisholm	250 00	
1873.					
May	26.	" " "	John O. Ferrill, order court	500 00	
June	6.	" " "	T. E. Lloyd " "	500 00	
Oct.	15.	" " "	Hartridge & C., suit est. Ferrill	500 00	
		" " "	advertising and water rent	277 95	
		" " "	paid insurance	907 90	
		" " "	repairs buildings	1,333 16	
		" " "	State, county, and city taxes	2,764 14	
Aug.	1.	" " "	U. S. court	9,099 26	
					16,132 41
1874.					
Apr.	14.	Balance on hand			$1,602 18

SAVANNAH, *April 14th*, 1874.

80 ADVERTISING & WATER RENT.

1870.				
Oct.	24.	To cash paid	for water rent	46 50
	24.	" " "	advertising rooms to rent	14 00
Nov.	22.	" " "	" " "	16 75
1871.				
Feb'y	2.	" " "	water rent	46 50
1872.				
Feb'y	15.	" " "	" "	46 50
Apr.	13.	" " "	advertising N. Y. Tribune	78 00
		" " "	Macon Union	21 70
1873.				
Aug.	14.	" " "	Atlanta Constitution	8 00
				$277 95

INSURANCE ACCOUNT.

1870.				
Apr.	26.	To cash paid	premium	50 00
May	9.	" " "	"	62 50
July	15.	" " "	"	125 00
1871.				
Feb'y	9.	" " "	"	50 00
June	3.	" " "	"	75 00

1872.							
Feb'y	15.	"	"	"	"	.....	50 00
	"	"	"	"	"	.....	68 75
Aug.	19.	"	"	"	"	.....	50 00
	"	"	"	"	"	.....	43 75
1873.							
Jan'y	29.	"	"	"	"	.....	70 00
May	8.	"	"	"	"	.....	70 00
Aug.	14.	"	"	"	"	.....	87 50
	5.	"	"	"	"	.....	35 00
1874.							
Jan'y	12.	"	"	"	"	.....	40 00
Feb'y	4.	"	"	"	"	.....	30 40
							$907 90

STATE, COUNTY, & CITY TAXES.

1870.							
Mc'h	12.	To cash paid		State & county taxes		.....	299 03
	17.	"	"	"	city	"	273 00
July	2.	"	"	"	"	"	187 50
Nov.	18.	"	"	"	State	"	157 73
Dec.	14.	"	"	"	city	"	93 75
1871.							
Mc'h	17.	"	"	"	"	"	93 75
Oct.	17.	"	"	"	"	"	395 00
1872.							
Feb'y	15.	"	"	"	State	.....	157 73
Aug.	19.	"	"	"	city	.....	206 25
Nov.	13.	"	"	"	"	.....	206 25
Sep.	25.	"	"	"	State	.....	51 95
1873.						.....	
May	13.	"	"	"	city	.....	103 13
Aug.	17.	"	"	"	"	.....	103 13
Oct.	15.	"	"	"	"	.....	103 12
1874.						.....	
Feb'y.	13.	"	"	"	"	.....	103 12
Apr.	9.	"	"	"	State	.....	249 70
							$2,764 14

81 REPAIRS OF BUILDINGS.

1870						
June	3.	To cash paid		repairs office Walker & Allen	.....	23 50
Nov.	7.	"	"	plastering & kalsomining bank	.....	50 00
	"	"	"	repairing roof	.....	17 50
	23.	"	"	new roof on bank building	.....	250 00
1871.						
Jan'y	5.	"	"	Murphy & Clark, for painting	.....	200 00
	7.	"	"	repairs, as per vouchers	.....	87 30
	20.	"	"	Douglas, for grates &c	.....	63 00
Feb'y	2.	"	"	repairs to safe	.....	30 00
	9.	"	"	Murphy & Clark, for painting	.....	118 20
	17.	"	"	" " " "	.....	40 00
	"	"	"	Dooley, for repairs	.....	7 50
	"	"	"	Roberts, painting roof	.....	14 00
	"	"	"	boy, cleaning yard	.....	6 00
Mc'h	7.	"	"	Murphy & Clark, a sper bill	.....	45 00
	7.	"	"	Douglass, " "	.....	6 00
Apr.	17.	"	"	repairs office Stone	.....	23 00
Nov.	8.	"	"	Grimball & Co., repairs to cellar	.....	8 00
	"	"	"	Henry Giles, for grates	.....	7 50
1872.						
Feb'y	15.	"	"	repairs rooms M. B. Millen	.....	20 00
	"	"	"	Halligan, for plumbing	.....	95 54
Apr.	13.	"	"	repairs office Walker & A	.....	5 75
Nov.	6.	"	"	Murphy & Clark, painting	.....	54 90
Sept.	10.	"	"	Halligan, for plumbing	.....	10 00
Dec.	18.	"	"	" " "	.....	5 00

1873.						
Jan'y	11.	"	"	"	Walker, as per bill	8 70
	16.	"	"	"	locks for vault	100 00
	"	"	"	"	repairs to gas fixtures	19 27
Feb'y	17.	"	"	"	Robider, for plumbing	7 00
M'ch	12.	"	"	"	Halligan, " "	10 00
						$1,333 16

(Endorsement:) U. S. circuit court, so. dis't of Georgia. In equity. Harvey Terry, compl't, vs. Bank of Commerce et al. Report of Miller Ketchum, receiver. Filed April 13th, 1874. Ja's McPherson, clerk.

81½ *Petition of H. Terry, for special counsel fees.*

The petition of Harvey Terry respectfully shows, that he was the original complainant in the above cause, and filed the bill of complaint on behalf of himself and all others in like condition, and that he realized said fund in court, and has borne in great part the burden of the litigation; that the fund now for distribution amounts to about thirty thousand dollars, and he therefore prays that he may be allowed, in addition to his taxable costs, a special fee of one thousand dollars, to be paid out of the fund before distribution, or such other amount as to the court shall seem just.

D. T. CORBIN,
Solicitor for Harvey Terry.

Refused as to special att'y's fees.
May 16, 1874.

JOHN ERSKINE, *Judge.*

(Endorsement:) U. S. A. so. dis't G'a. Harvey Terry vs. Bank of Commerce et al. Petition of Harvey Terry, for special counsel fee. Filed May 16, 1874. Ja's McPherson, clerk. D. T. Corbin, sol'r for pet'r. Petition denied May 16, 1874.

82 *Petition for appeal and severance.*

To the honorable the judges of the circuit court of the United States for the district aforesaid:

The petition of Harvey Terry, complainant in the above-entitled cause, respectfully shows, that your petitioner; in his individual capacity, (no other parties in said cause joining with him therein,) filed in said cause, on the 9th day of December, A. D. 1873, exceptions to the report of W. Grayson Mann, special master, to whom said cause stood referred, and among other exceptions, the following, to wit:

1ST EXCEPTION. For that said master by his said report certified that Geo. W. Hatch, claimant, who filed his application to be made a party to this cause, and to share in the distribution of the fund in court, on the 25th of March, 1872, was entitled to payment on his claim, to wit, seventy-five thousand dollars ($75,000) pro rata with other claimants, bill-holders; whereas said master should have certified that said George W. Hatch was not entitled to receive anything in this cause, (1) because it appears from said report that said George W. Hatch has not accepted, as have the other claimants in this cause, the assignment of said Bank of Commerce, of July 1, 1868, but has rejected the same, and since
83 said assignment has instituted various suits against said bank and pressed the same to judgment and execution, and thereupon has instituted numerous suits against persons holding stock in said Bank of Commerce, with the view to compel payment of his said claim by them, and has compelled some of said stockholders, to wit, Charles Green, to

pay upon his said claim the sum of ten thousand dollars, upon a judgment recovered against him; (2) because it also appears that said Geo. W. Hatch has collected and received on account of his said judgment and execution against the Bank of Commerce the sum of two thousand six hundred and eighty-eight dollars and sixty-eight cents, ($2.688,68.)

But if said Geo. W. Hatch is entitled to receive anything of the fund in court, he should only receive the same pro rata with other like claimants, bill-holders, after the said other claimants have received the same amount pro rata on their claims as recovered and received by said Geo. W. Hatch, upon his several judgments and executions aforesaid.

And your petitioner shows that at the April stated term of said court, May 13, 1874, said exceptions above mentioned were overruled, and said master's report was subsequently, May 18, 1874, confirmed so far as relates to said exception, and the fund in court ordered to be distributed accordingly.

That said decree of May 13 and May 18, 1874, of said court is,
84 as your petitioner is advised and humbly submits, erroneous; that said exceptions to said master's report should have been sustained, and said decree should be reversed.

That said decree affects alone your petitioner and said Geo. W. Hatch, as no other party complainant joined your petitioner in said exceptions, sustained or opposed them.

That your petitioner therefore prays that he may be allowed an appeal from the said decree to the Supreme Court of the United States, and this without joining other parties complainants with him as appellants, or other parties defendant than said George W. Hatch. And your petitioner will ever pray, &c.

D. T. CORBIN,
Solicitor for Harvey Terry.

(Endorsement:) U. S. A. southern dis't, Ga. In equity. Harvey Terry, complainant, vs. The Bank of Commerce. Petition for appeal and severance. D. T. Corbin, sol'r for pet'r. Filed May 18, 1874. Ja's McPherson, clerk. Corbin.

85 UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the fifth circuit court of the United States of America, for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said district, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the honorable John Erskine, U. S. judge for the districts of Georgia.

HARVEY TERRY, COMPL'T.,
vs.
BANK OF COMMERCE ET AL., DEF'TS. } In equity.

Allowance of appeal and severance.

On hearing the petition Harvey Terry, complainant in the above-entitled cause, for leave to appeal to the Supreme Court of the United States, and this without joining other parties to the record with him as appellants, it is adjudged that the interest of said Harvey Terry is

separate and distinct from other parties claimants in the record, no one of them having joined with said Terry in making the questions involved in the appeal, and it is ordered that said Harvey Terry have leave to appeal from said decree complained of, and this without joining any other party to the record with him as appellant.

It is further considered and adjudged from facts apparent on the record before the court, that George W. Hatch is the only party in-
86 terested as defendant in said appeal; that his interest is separate and distinct from any other party to the cause.

JOHN ERSKINE,
U. S. Judge.

In open court, May 18, 1873.

(Endorsement:) United States of America, southern district of Georgia. Harvey Terry *vs.* The Bank of Commerce, and John C. Ferrill, assignee. Allowance of appeal and severance. Filed May 18, 1874. Ja's McPherson, clerk. Corbin.

Appeal bond.

Know all men by these presents that we, Harvey Terry, of the city of Columbia, South Carolina, and John T. Newberry, of the city of Augusta Georgia, are held and firmly bound unto the Bank of Commerce in the full and just sum of two hundred and fifty dollars, to be paid to the said Bank of Commerce, or its certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this 20th day of May, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately at a circuit court of the United States for the
87 southern district of Georgia, held at Savannah, in a suit depending in said court, between Harvey Terry, as plaintiff, and the Bank of Commerce was defendant, a decree of judgment was rendered against the said Bank of Commerce, and the said Harvey Terry having obtained leave of the court to appeal, and filed a copy thereof in the clerk's office of the said court, to reverse the said decree of judgment in the aforesaid suit, and a citation directed to the said Bank of Commerce, citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington, the 2nd Monday of October next:

Now the condition of the above obligation is such that if the said Harvey Terry shall prosecute said writ of error to effect, and answer all damage and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HARVEY TERRY, [L. S.]
JNO. T. NEWBERY. [L. S.]

Signed, sealed, and delivered in presence of—
WILLARD F. WARNER,
C. P. FREEMAN.

Approved by—

JOHN ERSKINE,
U. S. Judge, Georgia.

MAY 22, 1874.

(Endorsement:) Harvey Terry *vs.* Bank of Commerce. Appeal bond. Filed May 23, 1874. Ja's McPherson, clerk. Corbin.

88 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Southern District of Georgia :

I, James McPherson, clerk of the United States fifth circuit court for the southern district of Georgia, do hereby certify that the foregoing papers are true copies of their originals on file and remaining of record in my office, and they form a full and complete exemplification of the record and proceedings in the suit of Harvey , complainant, *vs.* The Bank of Commerce and others, defendants, in said court.

In witness whereof I have hereunto set my hand and affixed the seal of said circuit court, this the thirtieth day of May, A. D. 1874.

[SEAL.] JA'S McPHERSON, *Clerk.*

(Indorsement on cover:)No. 469. Harvey Terry, appellant, *vs.* The Bank of Commerce. S. Georgia C. C. U. S. Filed 15th August, 1874.

REC. 469—4

SUPREME COURT OF THE UNITED STATES,

No. 224.

HARVEY TERRY, APPELLANT,

vs.

THE BANK OF COMMERCE, APPELLEE.

Argument by D. T. Corbin in behalf of Harvey Terry, Appellant.

STATEMENT.

This is a creditor's bill, filed by Harvey Terry in behalf of himself and all other parties in like condition, against the Bank of Commerce and John C. Ferrill, Assignee.

The Complainant alleges: That the Bank of Commerce was incorporated by the laws of Georgia; was located and carried on the business of banking at Savannah, Ga., issuing and circulating its notes or bills, commonly called bank bills, &c., &c. That the Complainant, for a valuable consideration, and in regular course of business, became possessed of ten thousand dollars of the bills issued and put in circulation by said Bank.

That said Bank failed, and on the 31st of July, 1866, became insolvent, and thenceforth refused to redeem its bills, pay its depositors or other creditors. That on said 31st of July, 1866, said Bank executed a deed of assignment on all its property, effects or assets to John C. Ferrill, in trust for the benefit of its creditors.

That said John C. Ferrill, on the day of the execution of said deed, accepted the trusts thereby created, and took upon himself the execution thereof. That said Ferrill neglected and refused to carry out the provisions of said trust, refused to distribute large sums of money among the creditors of the Bank, neglected and refused

to convert into money the property and assets of said Bank, but appropriated the same to his own use and the use of the Bank. Many special derelictions of duty are charged upon said Ferrill, as Trustee in the execution of his trust.

The complaint further charges, that by a provision in the charter of said Bank, "the personal and private property of each stockholder shall be bound for the ultimate redemption of all bills or notes issued by said Bank, and all other claims against the same, in proportion to the stock held by them respectively," and claimed the benefit of said provision should the same become necessary to secure his rights. (Folios 1 to 6.)

The bill prays for an account, for an injunction, and for a receiver. (Folio 8, 9.)

A copy of the assignment is attached to the bill, from which it appears "that by reason of losses arising from circumstances incident upon the late war, the Bank of Commerce is unable to pay its just and legal debts," that the stockholders at a meeting on the 8th of June, 1866, resolved "that the President and Board of Directors of the Bank of Commerce be, and they are hereby instructed and authorized to assign the assets and property of said corporation to some fit and proper person or persons, to be selected by the said President and Board of Directors, for the benefit of the creditors of the said corporation." That the Board of Directors resolved, June 21, 1866, "that the President be, and he is hereby directed to make and execute an assignment of all the property, estate, credits, and assets of this corporation to John C. Ferrill of Savannah, for the use and benefit of the creditors of this corporation." That in consideration of the premises, the President "grants, bargains, sells, aliens, remises, releases, confirms, assigns and transfers unto the said John C. Ferrill and his heirs and assigns, all the lands, tenements, and hereditaments, goods, chattels, merchandise, debts, choses in action, sum and sums of money due, owing and belonging to the said party of the first part, and all securities had, taken, and obtained for the same, and all the estate, right, title, interest, property, and claim of the party of the first part in and to the same, according to a schedule annexed and marked

A; * * unto the said John C. Ferrill * * upon the conditions and trusts that he shall forthwith take possession and seizin of the premises, and within such convenient time as to him shall seem meet * * shall convert all and singular the premises into money, and as soon as possible collect all and singular the debts and sum and sums aforesaid, and after deducting the costs and charges of these trusts, shall pay and apply the moneys arising therefrom in manner following, that is to say, he shall pay all money received by him to the creditors of the said party of the first part, ratably and in equal proportions, according to their several and respective legal priorities."

That said "John C. Ferrill is appointed attorney, irrevocable, to ask, demand, recover, and receive of and from all and every person and persons, all and singular the property and estate, goods, chattels, wares, merchandise, debts, choses in action, sum and sums of money, and demands due and owing or belonging to said party of the first part, and upon all receipts, acquitances to make, &c., and to sue, prosecute, &c." Folios 11 to 15.

The schedule "A" of said assignment describes, among other assets, "the banking house and lots adjoining building N. W. corner Bryan and Drayton Streets, Savannah," and various bonds, certificates, notes discounted, and $22,076.09 U. S. currency. Folios 15 to 19. Said assignment was recorded with the Clerk of the Superior Court of Chatham Co., Ga., July 31, 1866.

This bill was filed July 12, 1869, (folio 19), and subpœnas duly issued and served. (Folios 20, 21.) By leave of Court, the bill of complaint was amended on Jan. 8, 1870, by charging more specifically that said John C. Ferrill "is appropriating to his own use and to the use of the Bank and his co-stockholders a large portion of the funds in his hands as Assignee." (Folio 23).

On Jan. 18, 1870, Miller Ketcham was appointed Receiver, to receive, collect, keep and dispose of the property and assets of said Bank of Commerce, under the direction of the Court; and said Ferrill was directed to deliver the assets, property and effects of the Bank to him. (Folios 27 and 28.)

On said 18th of Jan., 1870, the bill of complaint was

taken as confessed against the Bank of Commerce, and a reference ordered to Andrew Sloan, Commissioner, to ascertain the amount due the Complainant. (F. 29.)

On April 20, 1870, said Sloan, Com., reported there was due from the Bank of Commerce to the Complainant $23,237.00 on the bills of said Bank.

Said report was duly confirmed by the Court, Dec. 15, 1870, and a final decree entered up. (F. 32, 33.)

That on the 16th of December, 1871, a decree calling in all persons having demands against the Bank of Commerce to file and prove the same, was made and ordered to be published. (F. 37.)

On the 22d of May, 1873, it was ordered to be referred to a Master, to count the bills filed in the cause, and to take testimony and report —1. The character of the several claims set up by the several claimants against the Bank of Commerce, and upon what evidence of indebtedness they were based, and the amount due, and whether any claimant was entitled to priority in payment. 2. Whether any one or more of said claimants, or any person or party for them, and if so, who, since July 31, 1866, by suit or otherwise, have pressed said claims or any portion thereof for payment against the Bank of Commerce, its officers stockholders, assignee, or debtors, and if suit has been brought thereon, to what result the same has been carried. 3. Whether any portion of any or all of said several claims has been paid; if so, how much, by whom and when; and if by the Bank of Commerce, its assignee, stockholders, or debtors, or any of them, how he or they paid the same, and upon what conditions, if any." (F. 39, 40.)

That pursuant to this order, said Special Master proceeded to take testimony and reported, that a large number of claiments, holding bills of the Bank of Commerce, had proved their bills before him to the amount of $172.485. (Folios 46, 47, 48.)

That in addition to these claimants some twelve others had proved their claims before him, who holding bills of said Bank, had instituted suits at law since the assignment against the Bank of Commerce, some of whom had pressed their suits to judgment and execution, and

some had not. Among others who had instituted suit Geo. W. Hatch, since July 31, 1866, had instituted three several suits against the Bank, as follows, to wit:

1. Instituted Feb. 27, 1867, and judgment Nov. 4, 1868, for..... $25,000
2. Instituted March 13, 1867, and judgment Nov. 26, 1867, for..... $25,000
3. Instituted March 15, 1867, and judgment Nov. 26, 1867, for..... $50,000

These suits were upon bills of the bank. (F. 56.)

That said Geo. W. Hatch pressed his said judgements for payment by instituting various suits against the stockholders of said Bank during 1869. A list of twenty such suits is given at folio 57. Said Hatch also instituted a suit against Charles Green, as a stockholder of said Bank, March 5, 1869, and recovered judgment therein November 14, 1872, and said Green satisfied said judgment by the payment of *ten thousand dollars*. (Folio 58.) That upon the said judgment of Geo. W. Hatch, of Nov. 26, 1867, for $50,000 with interest, damages, &c., a writ of *fieri facias* was issued and levied upon the property late of the Bank of Commerce, to wit: the Banking House, and lots adjoining building, N. W. corner Bryan and Drayton Streets, Savannah, (included in the assignment) which under said writ was sold by the Marshal and the net proceeds thereof ($2,688.68,) paid to the attorneys of said Geo. W. Hatch. Folio 59.

The Master reports in favor of the payment of the said claims of said Geo. W. Hatch, *pro rata* upon the bills involved in said judgments, but denies him any priority on account of having obtained judgments. (Folios 56 and 58.)

The Complainant, Harvey Terry, excepted to the report of the Master, and among other exceptions filed the following, to wit: "2*nd Exception.* For that said Master, by his said report, certified that Geo. W. Hatch, claimant, who filed his application to be made a party to this cause, and to share in the distribution of the fund in Court, on the 25th of March, 1872, was entitled to payment on his claim, to wit: *pro rata* with other claimants, bill holders; whereas, said Master should have certified that said Geo. W. Hatch was not entitled to receive

anything in the cause. 1. Because it appears from said report that said Geo. W. Hatch has not accepted, as have the other claimants in this cause, the assignment of said Bank of Commerce, of July 1st, 1866, but has rejected the same, and since said assignment has instituted various suits against said Bank, and pressed the same to judgment and execution, and thereupon has instituted numerous suits against persons holding stock in said Bank of Commerce, with the view to compel payment of his claim by them, and has compelled some of said stockholders, to wit, Charles Green, to pay upon his said claim the sum of ten thousand dollars, upon a judgment recovered against him; and because it also appears that said Geo. W. Hatch has collected and received on account of said judgment and execution against the Bank of Commerce, the sum of $2,688.68. But if said Geo. W. Hatch is entitled to receive anything of the fund in Court, he should only receive the same *pro rata* with other like claimants, bill holders, after the said other claimants have received the same amount *pro rata* on their claims as recovered and received by said Geo. W. Hatch upon his several judgments and executions aforesaid." (Folios 62 and 63.)

The Court over-ruled this exception, (folio 68) and as to it, confirmed the Report of the Master, and decreed that the same stand as the judgment of the Court, and that the fund in Court be distributed accordingly—(Folio 78.) From this decree of the Court the complaint prayed an appeal, on the ground that the same was erroneous, and the appeal was allowed. (Folios 82 to 86.)

Assignment of Errors.

That the Court erred in overruling the second exception to the Master's report filed by the appellant—the same should have been sustained.

ARGUMENT.

Geo. W. Hatch should not have been permitted by the Court below, to share in the fund realized from the assignment of the Bank of Commerce, of July 31, 1866, as he had declined to accept said assignment, and abide by its fair conditions—he had disentitled himself thereto.

1. The deed of assignment of the Bank of Commerce of July 31, 1866, is absolute upon its face, and has no condition whatever attached to it, save the condition of a *pro rata* distribution of the fund among creditors.—(Folios 11 to 15.) It was by the stockholders of said Bank intended to cover all the assets of the Bank. They resolved, "that the property and assets of said corporation be assigned," &c., without qualification or limitation. The Directors in carrying out the resolution of the stockholders resolved "that the President be and he is hereby directed * * to make an assignment of *all* the property, estate, credits and assets of this corporation to John C. Ferrill for the use and benefit of the creditors of this corporation."

The President, in carrying out said resolution of the directors, executed an assignment of "all the lands, tenements and hereditaments, goods, chattels, merchandise, debts, choses in action, sum and sums of money due, owing, or belonging to said party of the first part, *and* all securities had, taken, and obtained for the same, and all the estate, right, title, interest, property and claim of said party of the first part in and to the same, according to a schedule hereunto annexed, marked A" * * "in trust to pay all the moneys so to be received by him to the creditors of the said party of the first part, ratably and in equal proportions, according to their several and respective legal priorities."

Now, Geo. W. Hatch attempted to break up this arrangement, made for the benefit of all the creditors of the Bank. He brought three several suits against the Bank upon its bills, after the assignment was made, recovered three several judgments against it, amounting in the aggregate to $118,485.34, and thereupon took out execution and levied the same upon the Bank of Commerce building and lots adjoining, and sold them at public auction. He received from the Marshal on account of said sale the net sum of $2,688.68.

Now the Banking House and lots adjoining were expressly named in the schedule of assets, attached to the deed of assignment, (folio 15,) and passed thereunder to Ferrill, Assignee.

In the case of Field vs. Lord Donoughmore, 1 Dru.

& Warr., 228, the learned Chancellor of Ireland, Sir Edward B. Sugden, says: "The principle upon which this Court acts in cases like the present, is no longer in dispute. * * The estates were bound by the trust, and the only question is, has the plaintiff disentitled himself to the benefits of the trust thus created? * * But it is not absolutely necessary that the creditor should execute the deed; if he has assented to it, if he has acquiesced in it, or acted under its provisions, and complied with its terms, and the other side expressed no dissatisfaction, the settled law of the Court is, that he is entitled to its benefits. The mere fact of his signature is not actually required. But then, this Court, in letting in one of a class of creditors to the benefit of such a deed as this, is bound to see that he has performed all its fair conditions. This is a necessary preliminary to the right of such a creditor to participate in the fund.

The object of all such deeds is to protect the estate from being torn in pieces, and this Court, when called upon to effectuate them, is bound in the first instance, to inquire whether the arrangements to protect the estate, which were entered into between the debtor and his creditors, have or not been faithfully performed; and in every case where it finds *any creditor to have deviated from, and disturbed that arrangement, it is bound to deprive him of all benefit under the deed.*"

The deed of assignment in this case, as before observed, is absolute on its face, and being for the benefit of creditors, the presumption of law is, in the absence of evidence to the contrary, that they accept it. Tomkins vs. Wheeler, 16 Pet, 119. This presumption remains till the contrary is shown. Halsey vs. Whitney, 4 Mason, 206 Wheeler vs. Sumner, Id. 183. Bump on Fraudulent Conveyances, 338. When a trust deed comes to the knowledge of the beneficiaries, they are entitled to accept or reject it. Id., 339, and authorities cited.

This deed of assignment in this case was recorded July 31, 1866, with the Clerk of the Superior Court for Chatham Co., Ga., the day on which it was executed; and such record was thenceforth notice to all the world of the assignment.

In Forbes vs. Limond, 4 DeG. M. & G. 315, the Lord Chancellor said: "This, I think, is perfectly certain, that no person can be considered to have impliedly acceeded to a deed of this sort, within the true meaning of that expression, who has not put himself in precisely the same situation with regard to the debtors, as if he had executed it, the principle of the rule being, that if you put yourself in the situation of having the benefit of a deed, you must bear its obligations, although you have not literally executed the deed."

And he further holds, (316,) that the mere registering of their claims by creditors, with the assignee or his agents, but directing the bills to be returned to them, *because there were other persons liable upon them, and from whom the amount of the bills*, or part of it, *might be recovered*, "was not acceeding to the deed at all."

In the case of New England Bank vs. Lewis, (8th Pick., 119) the point of the case was, "whether the Plaintiffs had refused the provisions made for their benefit in the deed of trust, and if not, whether sufficient facts appear to amount to a waiver." The Court did not find, as matter of fact, an express refusal of the benefits of the trust deed, (p. 120), and therefore, went on to determine whether the Plaintiffs, by electing to proceed to judgment in their action at law, after the provision made for them in the trust deed, had waived the provisions made in their favor in the trust deed. The Court says, "It is not made a condition of the trust, that the Plaintiffs should discontinue their suit, nor does it appear that the defendants in that suit either expected or wished it to be done. They insisted on their defence to the action, and eventually prevailed. Under these circumstances the Plaintiffs had a right to proceed to trial, with the view of saving themselves from costs. If they had prevailed in their action, and had then elected to rely on the attachment rather than on the provision made for them in the deed of trust, this would have amounted to a waiver and disaffirmance of the trust."

The difference between the case at bar and this case of New England Bank vs. Lewis is, that in the case at bar, Geo. W. Hatch commenced his suits at law *after*

the making and publishing the assignment, and with full knowledge of it, and having obtained his judgments, he issued executions on them, and failing to collect them otherwise, levied the same upon, and sold a portion of the property embraced in the assignment.

In Ward vs. Lewis, 4th Pickering, 522, the Court treated the fact that the plaintiffs had not "attempted to secure their demand in some other way," as presumptive evidence of their acceptance and reliance on the assignment. The Court says. "The Plaintiffs must be presumed to have confided in this assignment, and to have relied on this source of payment, otherwise they would have attempted to secure their demands in some other way."

In this case, these creditors of the Bank did attempt to secure their demands in some other way, seized upon and sold a portion of the assigned property—the Banking House and lots adjoining; therefore, it is clear, beyond question, that he not only did not confide in the assignment, and rely upon this source of payment, but on the contrary, he deviated from and disturbed the arrangement, and the Court is, in the language of Lord Chancellor Sugden, "bound to deprive him of all benefits under the deed."

2. If the Court should decline to deprive Hatch of all benefits of the assignment, on account of the course pursued by him, we submit that he should be permitted to share in the fund now in Court, realized from the assignment, only after the other creditors who have received nothing, have received therefrom the same proportional amounts upon their claims as he has received upon his. This proposition is so equitable that it seems hardly necessary to adduce authority to sustain it.

If it were conceded that the Banking House of the Bank of Commerce and lots adjoining, were legal assets, and not embraced in the assignment of July 31, 1866, nevertheless the Court would, when said Hatch comes into equity and asks to share in the equitable assets, require him to do equity, and would postpone him till all the other creditors who had received nothing have received out of the equitable assets an equal proportion of their respective debts.

1 Story's Eq. Juris., Red. Ed., S. 557, and authorities cited.

But the Banking House and lots adjoining are equitable assets and passed to Ferrill under the assignment. The fund realized in this cause is from the assignment, and must be distributed equally among all the creditors of the Bank who have not disentitled themselves thereto.

Gibson vs. Finlay, 4 Maryland Ch., 75.

Robinson vs. Bank, 18 Ga., 65.

2 Lead. cases in Eq., Hare and Wal. notes, 305.

1 Story's Eq. Jur. S. 554, and authorities cited.

3. The sum of ten thousand dollars, received by Geo. W. Hatch from Charles Green, as a stockholder of the Bank of Commerce, (folio 58,) should be deducted from the amount of said Hatch's claim before he is allowed to share in the fund in Court.

The statutory liability of Charles Green as a stockholder in said Bank is as follows: "That the personal and private property of each stockholder shall be bound for the ultimate redemption of all bills or notes issued by said bank, and all other claims against the same, in proportion to the stock held by them, respectively." (Folio 5.)

This liability is proportionate and not absolute in amount, and is to each and every creditor of the Bank and not to any one creditor. Pollard vs. Bailey, 20 Wall., 520. It is an equitable asset. It can be reached only by a proceeding in equity. "The provision for a proportionate liability is equivalent to a provision for an appropriate form of equitable action to enforce it." (Id. 525.)

But equitable assets are distributed among creditors in proportion to their respective debts.

1 Story's Eq. Jur., Red. Ed., S. 554.

It may be a question whether the said Hatch, having got possession by his diligence of said $10,000, he should not be allowed to retain the same absolutely as his own; but there can be no question but that he should credit the amount upon his debt when he comes in here to share in a fund in equity.

D. C. Corbin

Dab'y. Jon. Williams

That the complainant having borne the burden of the suit for the benefit of the creditors, and realized the fund in the cause for general distribution to creditors of the Bank, the complainant was necessarily compelled to employ counsel, at heavy expense to himself and personally to pay the necessary costs and fees in inaugurating said suit and counting his Bank bills in proof in the cause; the creditors generally employed no counsel in the cause, the cost of counting the bills in proof in the cause, for all of the other creditors were paid from and borne by the fund in court as a part of the master's fees: and said creditors all shared in the benefit of the fund realized by complainant's labor and disbursements, and ought to share his burdens of the means necessary to accomplish this result for their benefit as well as his own.

Complainant's counsel, fees and disbursements ought to be allowed as taxed costs against the fund.

The counsel for the appellee is in error when he states in his argument, on page 3 of his brief, to wit:

"The appellee considers that all these acts were lawful, *i. e.*, the collection of that $2,688.68 on execution. "The sueing of the stockholders on their individual liability and the collection of $10,000 from one of them;" that they violate no condition in the assignment *express or implied*, and that they did not affect his rights to share in the fund before the court, except so far as they reduced his debt, and consequently the amount on which he should receive a dividend, for he asked for a dividend not on his original debt but on his debt as it stood after crediting the above collections."

The counsel forgets that said execution was levied on the Bank Building, a part of the property assigned in the deed, and to make away with and destroy as an asset that part of the assigned estate.

The appellee may consider this a lawful act, but the circuit court at Savannah did not so hold in a trial for the title of the property. Besides, the endeavor to break up and destroy the assigned estate, said appellee by said levy and attempted sale of said property cast a cloud upon the title of said estate to its great detriment and loss to the fund in this cause.

Again, appellee says at the bottom of page 6 of his brief:

"Appellant's statement, page 5 of his brief, that the master reported that this money was raised by levy and sale of the Banking house is not correct. The master did not report how this money was raised (folio 59) and all of the statements about the levy and sale of that property is an interpolation unauthorized by the record."

The appellee forgets that that transaction stands directly charged against said appellee on appellant's brief, page 10; and although said appellee charges that said fact is not shown by the record yet he does not deny that the facts of the case are as appellant has stated them, and appellant reverts to the fact that he has made two ineffectual attempts at the last term of this court to obtain a diminution of the record, in order to specially show this fact by the record, and the appellant holds the affidavit of the master in the cause that the facts are as stated in appellant's argument.

Another mistake made by the appellee is the statement "that he asked for a dividend, not on his original debt, but on his debt as it stood after crediting the above collections," whereas the record shows that the master made return for the full amount of the bank bills in proof (folio 56) in the record, and reported in payment of it *pro rata* in full. It is true that in folios 58 and 59 of the record said master found the fact that said sums of money had been collected; but in no part of said record does it appear, nor is it to the appellant known, that any credit or deduction whatever has been made on said claim.

But it does further appear (folio 57) of record that twenty other suits were instituted by said G. W. Hatch against stockholders of said bank, and it is reasonable to suppose and it is confidently believed that large collections have been made from those numerous defendants; yet no credit whatever on the claim of said appellee appears in said record of said cause. It was clearly within the power of the appellee to have shown that he had failed to make any collections from the stockholders on his twenty suits that he prosecuted against said stockholders as shown by the record, and it was his duty to do so, if he could have made that defence; whereas he not only failed to make that defence before the master, but he does not make that defence in his argument; and the appellant could not make that defence before the master beyond what was shown by the record, in the several causes.

The appellant claims that the case of Pollard *v.* Baily applies with peculiar force in this cause; that the principles of law as laid down in that case apply with particular force in this cause, as the liability of the stockholders in both of said causes being confined to the ultimate liability, which reads as follows: "That the personal and private property of each stockholder shall be bound for the *ultimate redemption* of all of the bills or notes issued by said bank, and all other claims against the same, in proportion to the stock held by them respectively." (Georgia Laws, session 1853–4, page 182, sec. xvii; Georgia Laws, session 1855–6, page 102, (No. 39;) Alabama Laws, session 1854, page 334.) While the liability of stockholders in most of the charters of the Georgia banks read: "The persons and property of the stockholders shall be pledged and bound at all times for the ultimate redemption of all of the bills," &c. In the charter of this bank the liability is for the ultimate liability only.

If this honorable court are of opinion that the ultimate liability of the stockholders in said bank is an equitable liability or asset, then we have proved that said appellee has hereto received $12,688.86 upon his claim from a common fund due to all of the creditors alike; that he has obtained, or attempted to obtain, a great amount and further sum, to this court unknown, from the same source, and therefore, as we believe, wholly disentitled himself to any part or share of the fund in this cause.

XIth edition 1 Story's Equity Jurisprudence, § 457, and authorities cited.

XIth edition *ante*, § 67.

D. T. CORBIN,
for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1875.

No. 224.

HARVEY TERRY, APPELLANT,

vs.

THE BANK OF COMMERCE.

ARGUMENT FOR APPELLEES,

BY

A. T. AKERMAN.

R. S. BAYNE, Printer, Critic Building.

Supreme Court of the United States.

OCTOBER TERM, 1875.

No. 224.

HARVEY TERRY, APPELLANT,

vs.

THE BANK OF COMMERCE.

STATEMENT.

On the 12th day of July, 1869, Harvey Terry, filed his bill in equity in the Circuit Court of the United States for the Southern District of Georgia, in behalf of himself and others in like condition, against the Bank of Commerce and John C. Ferrill.

He set forth that he was the holder of bills of that bank; that the bank had failed, and on the 31st day of July, 1866, had assigned to Ferrill, its cashier, all its property, effects, or assets for the benefit of its creditors; that Ferrill had accepted the trust and had taken possession of the assigned property, but had not executed the trust. The prayer was for the execution of the trust, an injunction, and receiver.

The bill was duly served, an injunction issued, and a receiver appointed.

A decree was rendered in favor of Terry against the bank, December 15, 1870, for $23,297, with interest and costs, for which a *fieri facias* issued on which there was a return of no property.

The receiver brought a fund into court. Publication was made for all creditors to present their claims. These were referred to a master who took testimony and made his report. To this report various exceptions were taken; one of them by Terry, the appellant, which is in these words:

"For that said master, by his said report, certified that George W. Hatch, claimant, who filed his application to be made a party to this cause and to share in the distribution of the fund in court on the 25th of March, 1872, was entitled to payment on his claim, to wit: seventy-five thousand dollars, pro-rata with other claimants, bill-holders; whereas, said master should have certified that said George W. Hatch was not entitled to receive anything in the cause: 1. Because it appears from said report that said George W. Hatch has hot accepted, as have the other claimants in this cause, the assignment of said Bank of Commerce of July 31st, 1866, but has rejected the same; and since said assignment has instituted various suits against said bank, and pressed the same to judgment and execution, and thereupon has instituted numerous suits against persons holding stock in said Bank of Commerce with the view to compel payment of his said claim by them, and has compelled some of said stockholders, to wit, Charles Green, to pay upon his said claim the sum of ten thousand dollars upon a judgment recovered against him, and because it also appears that said George W. Hatch has collected and received on account of his said judgment and execution against the Bank of Commerce, the sum of $2,688.86. But if said George W. Hatch is entitled to receive anything of the fund in court, he should only receive the same pro-rata with other like claimants, bill-holders, after the said other claimants have received the same amount, pro-rata, on their claims as recovered and received by said George W. Hatch upon his several judgments and executions aforesaid."

This exception was overruled.

A decree was rendered ordering the distribution of the fund in court according to the report of the master as modified by the rulings of the court on the exceptions.

From this decree Terry petitioned for a several appeal, grounded on the overruling of the above-quoted exception, and this was allowed by the court in an order declaring him the sole appellant and Hatch the sole appellee.

The error assigned by the appellant is that the court overruled the above-quoted exception.

Argument.

The appellant argues that Hatch, the appellee, disentitled himself to share in the fund produced by the assignment by the acts stated in the exception, which the court overruled.

These acts were:

The suing of the bank to judgment and execution after the assignment.

The collection of $2,688.68 on that execution.

The suing of the stockholders on their individual liability, and

The collection of $10,000 from one of them, Green.

The appellee considers that all these acts were lawful, that they violated no condition in the assignment, express or implied, and that they did not affect his right to share in the fund before the court, except so far as they reduced his debt and consequently the amount on which he should receive a dividend, for he asked for a dividend not on his original debt but on his debt as it stood after crediting the above collections.

The assignment was for the benefit of all the creditors, (record folio 13,) not for such of them only as might forbear to sue or might submit to other terms. Indeed, under the law of Georgia, an insolvent bank could not, in an assignment, discriminate among its creditors. See code of 1873, section 4,429, which is a reprint of the law in force at the date of this assignment.

There was no express condition in the assignment that the creditors who were to avail themselves of it should not sue the bank.

We think that the law implies no such condition. A suit does no harm to the bank, to the assignee, or to the other creditors; none to the bank when the demand is a just one, for in such case there need be no expense in litigation, and the costs must be paid by the creditor, except when he finds property subject to his judgment; none to the assignee, for he is no way affected by the suit; none to the other creditors, who receive no less on their claims in consequence of the suit. If the assignment is valid, it immediately puts all the assigned property beyond the reach of an execution obtained in the suit.

Various motives may impel a creditor to sue. He may not be sure that the assignment is valid. He may believe that there is property of the debtor which the assignment does not cover. He may believe that a judgment against the bank will be advantageous to him in proceedings against the stockholders. These would all be good reasons for suing; and if he sues from excessive caution, or even wantonly, it is difficult to see why he should thereby lose his rights under an unconditional assignment. He still remains a creditor and as such is a beneficiary under the assignment.

Participation under the assignment does not discharge the unpaid portion of the debt, except "in virtue of some express stipulation" * * * "or some positive statutory provision."

Burrill on Assignments, 579. In this case there is no such stipulation or statute. Therefore the debt remains, attended of course by the right to put it in suit.

In Coverdale *vs* Wilder, 17 Pick., 178, it was held that the plaintiff in a pending suit against the assignor did not waive his rights under the assignment by continuing his action in court after the assignment. "His continuing it in court may have been for greater security." With equal reason an action may be commenced "for greater security," notwithstanding the assignment.

See Sharpless *vs.* Welsh, 4 Dall., 279.
Wurtz *vs.* Hart, 13 Iowa Rep., 515.
Jewett *vs.* Woodward, 1 Edwards Ch. Rep., 195.

It is at least possible that there was property of the bank not covered by the present assignment. It contains language very comprehensive, and apparently embracing all its property, but this is limited by the words "according to a schedule thereof, hereto annexed, marked schedule A," folio 12.

See Marsh vs. Burroughs, 1 Woods' Rep., 469.
Roberts *vs.* Boylan, 24 Ga. Rep., 40.
Wilkes *vs.* Ferris, 4 Johns. Rep., 335.
Burrill on Assignments, 354.

The cases cited by appellant do not support him. Field *vs.* Donoughmore, 1 Drury & Warr., 227, was the case of a composition-deed in which the creditors covenanted not to sue. Field participated in the preliminary proceedings, but refused to execute the deed, and sued the debtor. The debtor died and the suit was thereby ended. Then Field executed the deed, and it was held that he had disentitled himself.

Forbes *vs.* Limond, 4 DeG., M. & G., 298, was the case of a composition-deed, which was to determine if an adjudication of insolvency should be awarded against the debtor. The plaintiffs did not execute the deed or do any equivalent

act. A dividend was paid to those creditors who had executed the debt. Then there was an adjudication of insolvency, and the trustee, or inspector, Limond, without notice of plaintiffs' claim, paid all the trust money in his hands to the assignee in insolvency. The plaintiffs received a dividend on their debt from the assignee in insolvency, and afterwards sued Limond for the same dividend which the creditors executing the deed had received from him, and their bill was dismissed. The plaintiffs had got from the assignee in insolvency some of the very money which they sued Limond for not having paid to them.

Appellee's collection of $2,688.68 under his execution should not divest him of his rights under the assignment. Having a right to sue notwithstanding the assignment, he had a right to the fruits of his suit. If the collection was made from property outside of the assignment, it would not affect his rights under the assignment except so far as it reduces his debts and, proportionately, his share in the assigned fund. And in the strongest supposable case, that of a collection by levy and sale of the assigned property, the title of the assignee is not at all affected by such sale, and no rights under the assignment are impaired. The purchaser at such a sale gets no title against a valid assignment.

But whether this objection be well founded or not in the abstract, Mr. Terry has no right to raise it here. In the present suit, not content with establishing his demand by a decree, he has procured an order for execution to issue, and has sent the marshal on a search for property to levy it on, folios 33, 34, 35. The only difference between him and Hatch is that he has been unsuccessful while Hatch has been partly successful in a similar effort.

Appellant's statement, page 5 of his brief, that the master reported that this money was raised by levy and sale of the

banking-house is not correct. The master did not report how this money was raised, (folio 59,) and all of the statements about the levy and sale of that property is an interpolation unauthorized by the record.

Whatever may be the facts on that subject, it is clear from the record that the assignee was not divested of that property. Long after the date of that alleged collection, January 21, 1869, folio 59, we find the receiver receiving rent and paying insurance, water-rent, repairs, (folios 79 to 81,) and as late as December, 1873, the court ordered a sale of the real estate, (folios 66, 67,) and there appears to have been no property in the estate bringing rent or subject to such expenses and such an order but the banking-house.

See schedule, folios 15 to 18.

The suing of the stockholders on their personal liability was a lawful pursuit by the appellee of an additional resource which the law gave him. It did not touch the assets of the bank.

We do not overlook the decision of this Court in Pollard *vs.* Bailey, (20 Wall, 520,) that liability of this kind is enforceable only in equity, and the approving reference to that decision in the case of Terry *vs.* Tubman at this term. But it is respectfully submitted that it was long ago held in Georgia that under that liability the individual bill-holder could sue the individual stockholder at common law, and that it has been the constant practice there to entertain such suits.

Lane *vs.* Morris, 8 Ga. Rep., 468, on p. 477.
Dozier *vs.* Thornton, 16 Ga., 325, on p. 328.

2. Appellant's demand, that Hatch shall retire from this distribution until other creditors have got as much in proportion as he has got from other sources, is simply a demand that others shall profit by his diligence in addition to what they gain by the reduction of his debt and claim; that he shall be

worse off here than if he had made no effort elsewhere, though he has not got a dollar that would otherwise have come into this fund.

The equality which is equity is equality between those who are equally meritorious, not equality between the inactive and the diligent. Hatch has run risks, incurred expense, spent time, and done work in his pursuit of the stockholders, and ought to have the full benefit of his efforts.

A. T. AKERMAN,
For Appellees.